97TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
No. 97-984

TAX TREATMENT OF PERIODIC PAYMENTS

DECEMBER 21 (legislative day DECEMBER 19), 1982.—Ordered to be printed

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Mr. ROSTENKOWSKI, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 5470]

The committee of conference on the disagreeing votes of the two Houses on the House amendment to the Senate amendment to the text of the bill (H.R. 5470) to amend the Internal Revenue Code of 1954 with respect to the tax treatment of periodic payments for damages received on account of personal injury or sickness, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment to the Senate amendment, insert the following:

SECTION 1. AMENDMENT OF 1954 CODE.

Whenever in title I or II an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

TITLE I—INCOME TAX PROVISIONS

SEC. 101 TREATMENT OF RECIPIENT OF SETTLEMENT PERIODIC PAYMENTS.

(a) TREATMENT OF RECIPIENT.—Paragraph (2) of section 104(a) (relating to compensation for injuries or sickness) is amended by striking out "whether by suit or agreement" and inserting in lieu thereof "whether by suit or agreement and whether as lump sums or as periodic payments".

(b) TREATMENT OF ASSIGNEE-PAYOR.—

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(1) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 130 as section 131 and by inserting after section 129 the following new section:

"SEC. 130. CERTAIN PERSONAL INJURY LIABILITY ASSIGNMENTS.

"(a) IN GENERAL.—Any amount received for agreeing to a qualified assignment shall not be included in gross income to the extent that such amount does not exceed the aggregate cost of any qualified funding assets.

"(b) TREATMENT OF QUALIFIED FUNDING ASSET.—In the case of any qualified funding asset—

"(1) the basis of such asset shall be reduced by the amount excluded from gross income under subsection (a) by reason of the purchase of such asset, and

"(2) any gain recognized on a disposition of such asset shall be treated as ordinary income.

"(c) QUALIFIED ASSIGNMENT.—For purposes of this section, the term 'qualified assignment' means any assignment of a liability to make periodic payments as damages (whether by suit or agreement) on account of personal injury or sickness—

"(1) if the assignee assumes such liability from a person who is a party to the suit or agreement, and

"(2) if—

"(A) such periodic payments are fixed and determinable as to amount and time of payment,

"(B) such periodic payments cannot be accelerated, deferred, increased, or decreased by the recipient of such payments,

"(C) the assignee does not provide to the recipient of such payments rights against the assignee which are greater than those of a general creditor,

"(D) the assignee's obligation on account of the personal injuries or sickness is no greater than the obligation of the person who assigned the liability, and

"(E) such periodic payments are excludable from the gross income of the recipient under section 104(a)(2).

"(d) QUALIFIED FUNDING ASSET.—For purposes of this section, the term 'qualified funding asset' means any annuity contract issued by a company licensed to do business as an insurance company under the laws of any State, or any obligation of the United States, if—

"(1) such annuity contract or obligation is used by the assignee to fund periodic payments under any qualified assignment,

"(2) the periods of the payments under the annuity contract or obligation are reasonably related to the periodic payments under the qualified assignment, and the amount of any such payment under the contract or obligation does not exceed the periodic payment to which it relates,

"(3) such annuity contract or obligation is designated by the taxpayer (in such manner as the Secretary shall by regulations prescribe) as being taken into account under this section with respect to such qualified assignment, and

"(4) such annuity contract or obligation is purchased by the taxpayer not more than 60 days before the date of the qualified

assignment and not later than 60 days after the date of such assignment."

(2) CONFORMING AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by striking out the item relating to section 130 and inserting in lieu thereof the following new items:

"Sec. 130. Certain personal injury liability assignments.
"Sec. 131. Cross references to other Acts."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1982.

SEC. 102. EXCLUSION FROM GROSS INCOME FOR CERTAIN FOSTER CARE PAYMENTS.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income), as amended by section 101(b), is amended by redesignating section 131 as section 132 and by inserting after section 130 the following new section:

"SEC. 131. CERTAIN FOSTER CARE PAYMENTS.

"(a) GENERAL RULE.—Gross income shall not include amounts received by a foster parent during the taxable year as qualified foster care payments.

"(b) QUALIFIED FOSTER CARE PAYMENT DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified foster care payments' means any amount—

"(A) which is paid by a State or political subdivision thereof or by a child-placing agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and

"(B) which is—

"(i) paid to reimburse the foster parent for the expenses of caring for a qualified foster child in the foster parent's home, or

"(ii) a difficulty of care payment.

"(2) QUALIFIED FOSTER CHILD.—The term 'qualified foster child' means any individual who—

"(A) has not attained age 19, and

"(B) is living in a foster family home in which such individual was placed by—

"(i) an agency of a State or political subdivision thereof, or

"(ii) an organization which is licensed by a State (or political subdivision thereof) as a child-placing agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).

"(c) DIFFICULTY OF CARE PAYMENTS.—For purposes of this section—

"(1) DIFFICULTY OF CARE PAYMENTS.—The term 'difficulty of care payments' means payments to individuals which are not described in subsection (b)(1)(B)(i), and which—

"(A) are compensation for providing the additional care of a qualified foster child which is—

"(i) required by reason of a physical, mental, or emotional handicap of such child with respect to which

the State has determined that there is a need for additional compensation, and

"(ii) provided in the home of the foster parent, and

"(B) are designated by the payor as compensation described in subparagraph (A).

"(2) LIMITATION BASED ON NUMBER OF CHILDREN.—In the case of any foster home, difficulty of care payments for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than 10 qualified foster children."

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 is amended by striking out the item relating to section 131 and by inserting in lieu thereof the following items:

"Sec. 131. Certain foster care payments.
"Sec. 132. Cross references to other Acts."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1978.

TITLE II—TAX STATUS OF INDIAN TRIBAL GOVERNMENTS

SEC. 201. SHORT TITLE.

This title may be cited as the "Indian Tribal Governmental Tax Status Act of 1982".

SEC. 202. INDIAN TRIBAL GOVERNMENTS TREATED AS STATES FOR CERTAIN PURPOSES.

(a) GENERAL RULE.—Chapter 80 (relating to general rules) is amended by adding at the end thereof the following new subchapter:

"Subchapter C—Provisions Affecting More than One Subtitle

"Sec. 7871. Indian tribal governments treated as States for certain purposes.

"SEC. 7871. INDIAN TRIBAL GOVERNMENTS TREATED AS STATES FOR CERTAIN PURPOSES.

"(a) GENERAL RULE.—An Indian tribal government shall be treated as a State—

"(1) for purposes of determining whether and in what amount any contribution or transfer to or for the use of such government (or a political subdivision thereof) is deductible under—

"(A) section 170 (relating to income tax deduction for charitable, etc., contributions and gifts),

"(B) sections 2055 and 2106(a)(2) (relating to estate tax deduction for transfers of public, charitable, and religious uses), or

"(C) section 2522 (relating to gift tax deduction for charitable and similar gifts);

"(2) subject to subsection (b), for purposes of any exemption from, credit or refund of, or payment with respect to, an excise tax imposed by—

"(A) chapter 31 (relating to tax on special fuels),

"(B) chapter 32 (relating to manufacturers excise taxes),

"(C) subchapter B of chapter 33 (relating to communications excise tax), or

"(D) subchapter D of chapter 36 (relating to tax on use of certain highway vehicles);

"(3) for purposes of section 164 (relating to deduction for taxes);

"(4) subject to subsection (c), for purposes of section 103 (relating to interest on certain governmental obligations);

"(5) for purposes of section 511(a)(2)(B) (relating to the taxation of colleges and universities which are agencies or instrumentalities of governments or their political subdivisions);

"(6) for purposes of—

"(A) section 37(e)(9)(A) (relating to certain public retirement systems),

"(B) section 41(c)(4) (defining State for purposes of credit for contribution to candidates for public offices),

"(C) section 117(b)(2)(A) (relating to scholarships and fellowship grants), and

"(D) section 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities); and

"(7) for purposes of—

"(A) chapter 41 (relating to tax on excess expenditures to influence legislation), and

"(B) subchapter A of chapter 42 (relating to private foundations).

"(b) ADDITIONAL REQUIREMENTS FOR EXCISE TAX EXEMPTIONS.—Paragraph (2) of subsection (a) shall apply with respect to any transaction only if, in addition to any other requirement of this title applicable to similar transactions involving a State or political subdivision thereof, the transaction involves the exercise of an essential governmental function of the Indian tribal government.

"(c) ADDITIONAL REQUIREMENTS FOR TAX-EXEMPT BONDS.—

"(1) IN GENERAL.—Subsection (a) of section 103 shall apply to any obligation (not described in paragraph (2)) issued by an Indian tribal government (or subdivision thereof) only if such obligation is part of an issue substantially all of the proceeds of which are to be used in the exercise of any essential governmental function.

"(2) NO EXEMPTION FOR CERTAIN PRIVATE-ACTIVITY BONDS.—Subsection (a) of section 103 shall not apply to any of the following issued by an Indian tribal government (or subdivision thereof):

"(A) An industrial development bond (as defined in section 103(b)(2)).

"(B) An obligation described in section 103(l)(1)(A) (relating to scholarship bonds).

"(C) A mortgage subsidy bond (as defined in paragraph (1) of section 103A(b) without regard to paragraph (2) thereof).

"(d) TREATMENT OF SUBDIVISIONS OF INDIAN TRIBAL GOVERNMENTS AS POLITICAL SUBDIVISIONS.—For the purposes specified in subsection (a), a subdivision of an Indian tribal government shall be treated as a political subdivision of a State if (and only if) the Secretary determines (after consultation with the Secretary of the Interior) that such subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government."

(b) CONFORMING AMENDMENTS RELATING TO CROSS REFERENCES.—

(1) Subsection (d) of section 41 is amended to read as follows:

"(d) CROSS REFERENCES.—

"(1) For disallowance of credits to estates and trusts, see section 642(a)(2).

"(2) For treatment of Indian tribal governments as States (and the political subdivisions of Indian tribal governments as political subdivisions of States), see section 7871."

(2) Subsection (m) of section 103 is amended to read as follows:

"(m) CROSS REFERENCES.—

"For provisions relating to the taxable status of—

"(1) Certain obligations issued by Indian tribal governments (or their subdivisions), see section 7871.

"(2) Exempt interest dividends of regulated investment companies, see section 852(b)(5)(B).

"(3) Puerto Rican bonds, see section 3 of the Act of March 2, 1917, as amended (48 U.S.C. 745).

"(4) Virgin Islands insular and municipal bonds, see section 1 of the Act of October 27, 1919 (48 U.S.C. 1403).

"(5) Certain obligations issued under title I of the Housing Act of 1949, see section 102(g) of title I of such Act (42 U.S.C. 1452(g)).

(3) Section 164(f) is amended by adding at the end thereof the following new paragraph:

"(3) For treatment of taxes imposed by Indian tribal governments (or their subdivisions), see section 7871."

Section 170(k) is amended by adding at the end thereof the following new paragraph:

"(8) For charitable contributions to or for the use of Indian tribal governments (or their subdivisions), see section 7871."

(5) Section 2055(f) is amended by adding at the end thereof the following new paragraph:

"(11) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871."

(6) Subparagraph (F) of section 2106(a)(2) is amended to read as follows:

"(F) CROSS REFERENCES.—

"(i) For option as to time for valuation for purposes of deduction under this section, see section 2032.

"(ii) For exemption of certain bequests for the benefit of the United States and for rules of construction for certain bequests, see section 2055(f).

"(iii) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871."

(7) Subsection (d) of section 2522 is amended to read as follows:

"(d) CROSS REFERENCES.—

"(1) For exemption of certain gifts to or for the benefit of the United States and for rules of construction with respect to certain bequests, see section 2055(f).

"(2) For treatment of gifts to or for the use of Indian tribal governments (or their subdivisions), see section 7871."

(8) Section 4227 is amended to read as follows:

"SEC. 4227. CROSS REFERENCES.

"(1) For exemption for a sale to an Indian tribal government (or its subdivision) for the exclusive use of an Indian tribal government (or its subdivision), see section 7871.

"(2) For credit for taxes on tires and tubes, see section 6416(c)."

(9) The table of sections for subchapter G of chapter 32 is amended by striking out the item relating to section 4227 and inserting in lieu thereof the following new item:

"Sec. 4227. Cross references."

(10) Section 4484 is amended to read as follows:

"SEC. 4484. CROSS REFERENCES.

"(1) For penalties and administrative provisions applicable to this subchapter, see subtitle F.

"(2) For exemption for uses by Indian tribal governments (or their subdivisions), see section 7871."

(11) The table of sections for subchapter D of chapter 36 is amended by striking out the item relating to section 4484 and inserting in lieu thereof the following new item:

"Sec. 4484. Cross references."

(12) Sections 6420(h) and 6421(j) are each amended by adding at the end thereof the following new paragraph:

"(4) For treatment of an Indian tribal government as a State (and a subdivision of an Indian tribal government as a political subdivision of a State), see section 7871."

(13) Sections 6424(g) and 6427(k) are each amended by adding at the end thereof the following new paragraph:

"(3) For treatment of an Indian tribal government as a State (and a subdivision of an Indian tribal government as a political subdivision of a State), see section 7871."

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 80 is amended by adding at the end thereof the following new item:

"Subchapter C. Provisions affecting more than one subtitle."

SEC. 203. DEFINITION OF INDIAN TRIBAL GOVERNMENT.

Subsection (a) of Section 7701 (relating to definitions) is amended by adding at the end thereof the following new paragraph:

"(40) INDIAN TRIBAL GOVERNMENT.—The term 'Indian tribal government' means the governing body of any tribe, band, community, village, or group of Indians which is determined by the Secretary, after consultation with the Secretary of the Interior, to exercise substantial governmental functions and in Alaska shall include only the Metlakatla Indian Community."

SEC. 204. EFFECTIVE DATES.

The amendments made by this title—

(1) insofar as they relate to chapter 1 of the Internal Revenue Code of 1954 (other than section 103 thereof), shall apply to taxable years beginning after December 31, 1982, and before January 1, 1985,

(2) insofar as they relate to section 103 of such Code, shall apply to obligations issued after December 31, 1982, and before January 1, 1985,

(3) insofar as they relate to chapter 11 of such Code, shall apply to estates of decedents dying after December 31, 1982, and before January 1, 1985,

(4) insofar as they relate to chapter 12 of such Code, shall apply to gifts made after December 31, 1982, and before January 1, 1985, and

(5) insofar as they relate to taxes imposed by subtitle D of such Code, shall take effect on January 1, 1983, and shall cease to apply at the close of December 31, 1984.

TITLE III—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SEC. 301. TREATMENT OF HAWAII PREPAID HEALTH CARE ACT UNDER EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) EXEMPTION FROM PREEMPTION.—Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended by adding at the end thereof the following new paragraph:

"(5)(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§ 393–1 through 393–51).

"(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a)—

"(i) any State tax law relating to employee benefit plans, or

"(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

"(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after the date of the enactment of this paragraph), but the Secretary may enter into cooperative arrangements under paragraph and section 506 with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts."

(b) TREATMENT OF OTHER STATE LAWS.—The amendment made by this section shall not be considered a precedent with respect to extending such amendment to any other State law.

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 302. TREATMENT OF MULTIPLE EMPLOYER WELFARE ARRANGEMENTS UNDER EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) DEFINITION OF MULTIPLE EMPLOYER WELFARE ARRANGEMENT.—Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002), relating to definitions, is amended by adding at the end thereof the following new paragraph:

"(40)(A) The term 'multiple employer welfare arrangement' means an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained—

"(i) under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements, or

"(ii) by a rural electric cooperative.

"(B) For purposes of this paragraph—

"(i) two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group,

"(ii) the term 'control group' means a group of trades or businesses under common control,

"(iii) the determination of whether a trade or business is under 'common control' with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b), except that, for purposes of this paragraph, common control shall not be based on an interest of less than 25 percent, and

"(iv) the term 'rural electric cooperative' means—

"(I) any organization which is exempt from tax under section 501(a) of the Internal Revenue Code of 1954 and which is engaged primarily in providing electric service on a mutual or cooperative basis, and

"(II) any organization described in paragraph (4) or (6) of section 501(c) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code and at least 80 percent of the members of which are organizations described in subclause (I)."

(b) LIMITATION ON PREEMPTION OF STATE LAW WITH REGARD TO WELFARE PLANS WHICH ARE MULTIPLE EMPLOYER WELFARE ARRANGEMENTS.—Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)), as amended by section 301 of this Act, is further amended by adding at the end thereof the following new paragraph:

"(6)(A) Notwithstanding any other provision of this section—

"(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which

regulates insurance may apply to such arrangement to the extent that such law provides—

"(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

"(II) provisions to enforce such standards, and

"(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this title, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this title.

"(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 3(1) and section 4 necessary to be considered an employee welfare benefit plan to which this title applies.

"(C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this title apply to an employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or program participating in, subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

"(D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

And the House agree to the same.

DAN ROSTENKOWSKI,
SAM GIBBONS,
J. J. PICKLE,
JOHN J. DUNCAN,
BILL FRENZEL,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
MALCOLM WALLOP,
RUSSELL B. LONG,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 5470) to amend the Internal Revenue Code of 1954 with respect to the tax treatment of periodic payments for damages received on account of personal injury or sickness, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House amendment to the Senate amendment struck out all of the Senate amendment and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the House amendment and the Senate amendment. The differences between the House amendment, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Periodic Payment Settlement Act of 1982

1. Exclusion for Periodic Damage Payments

Present law

Present law generally excludes from gross income damages received by an individual on account of personal injuries or sickness. Furthermore, the IRS has ruled that damages for personal injuries are excludible from gross income whether paid as a lump sum, or paid in periodic payments out of a fund invested and owned by the tortfeasor or an insurer.

House bill

The House bill excludes from gross income damage payments for injuries or sickness whether paid as lump sums or as periodic payments.

Furthermore, under certain circumstances, an amount received for agreeing to undertake an assignment of a liability to make periodic payments of personal injury damages is not included in gross income. Specifically, any amount so received will not be included in gross income to the extent it is used to purchase an annuity contract issued by a company licensed to do business as an insurance company under the laws of any State or an obligation of the United States. It is intended that the definition of a "qualified funding asset," meaning an annuity contract designed to satisfy a "qualified assignment," encompass an annuity policy the payments from which end upon the death of a measuring life, i.e., an annuity with a life contingency.

The provision is effective for taxable years ending after 1982.

Senate amendment

The Senate amendment is similar to the House bill except that if an annuity contract is used to fund periodic payments, it must be issued by a life insurance company.

Conference agreement

The conference agreement follows the House bill.

The conferees wish to emphasize that, as a result of this legislation, no negative inference should be drawn as to the appropriate tax treatment of such transactions under present law and administrative rulings.

2. Exclusion From Gross Income For Certain Foster Care Payments

Present law

Except as otherwise provided by law, gross income means all income from whatever source derived.

The IRS has set forth guidelines regarding the tax treatment of amounts received and amounts expended by individuals providing foster care to children. If foster parents are rendering gratuitous services to child-placing agencies in feeding, clothing, and caring for foster children, then payments received from the child-placing agency for the support of a foster child are excludible from gross income to the extent that the payments do not exceed the expenses incurred by the foster parents in supporting the child. If foster parents have a profit motive, then a portion of each payment from the child-placing agency for the support of a foster child is excludible from gross income to the extent that the payments do not exceed the expenses incurred by the foster parents in supporting the child. If foster parents have a profit motive, then a portion of each payment from the child-placing agencies represents reimbursement or advancement for expenses incurred on behalf of the agency by the foster parents, and the remainder is compensation for their services.

House bill

The House bill excludes from the gross income of a foster parent amounts paid to reimburse the foster parent for the expense of caring for a foster child (under the age of 19) in the foster parent's home and difficulty of care payments. This exclusion, in the case of difficulty of care payments, is available with respect to payments for the care of up to 10 children.

Difficulty of care payments are payments that are compensation for providing the additional care of a foster child which is required by reason of a physical, mental, or emotional handicap with respect to which the State has determined that there is a need for additional compensation and which is provided in the home of the foster parent.

In order for payments to be excludible, the foster child with respect to whom payments are made must be placed by an agency of a State or political subdivision thereof, or by a State-licensed, private, tax-exempt agency.

The provision applies to taxable years beginning after December 31, 1978.

Senate amendment

The Senate amendment is similar to the House bill, with two exceptions. First, the Senate amendment excludes only difficulty of

care payments, not reimbursements. Second, the amendment does not require private child-placing agencies to be licensed by the State.

Conference agreement

The conference agreement follows the House bill.

3. Taxation of Indian Tribal Governments

Present law

States (including the District of Columbia) and their political subdivisions generally are exempt from Federal tax. In addition, numerous transactions by private parties with State governments and their political subdivisions result in favorable Federal tax treatment (e.g., exclusion from income, tax deductions, or tax credits) for the private parties involved.

Under present law, Indian tribal governments are not treated as State governments. The Internal Revenue Service has ruled that tribal government income is tax exempt until the income is received, or constructively received, by tribe members (Rev. Rul. 67-284, 1967-2 C.B. 55).

House bill

No provision.

Senate amendment

Overview

The Senate amendment provides that, for a series of specified purposes under the Internal Revenue Code, Indian tribal governments are to be treated the same as States or similar to States. The term Indian tribal government is defined to include in Alaska only the Metlakatla Indian Community. The provisions will not apply to any Indian tribal government unless it is recognized by the Treasury Department (after consultation with the Interior Department) as exercising sovereign powers. Sovereign powers include the power to tax, the power of eminent domain, and police powers (such as control over zoning, police protection, and fire protection).

Present law generally provides that political subdivisions of States are to be treated essentially the same as the States themselves. Therefore, a subdivision of an Indian tribal government will be treated as a political subdivision of a State for the purposes specified in the amendment if the Treasury Department determines (after consultation with the Interior Department) that the subdivision of the Indian tribal government has been delegated the right to exercise one or more of the sovereign powers of the Indian tribal government.

Taxation of Indian tribal governments

Under the amendment, most Federal excise taxes will not apply to articles sold for the exclusive use of Indian tribal governments. Specifically, exemption will be provided from the following taxes:

Diesel and special motor fuels;

Gasoline;

Tires, innertubes, and tread rubber;

Lubricating oil;
Highway use tax;
Bows and arrows;
Firearms; and
Telephones.

The amendment does not change the present income tax treatment of Indian tribal governments specified in Rev. Rul. 67-284, *supra.*

Special treatment of certain transactions involving Indian tribal governments

General rule.—Indian tribal governments will be treated as States in the following transactions involving private parties—

(1) The exclusion from income of interest on certain obligations of State governments (except as set forth below);

(2) The income tax deduction for taxes paid to State and local governments;

(3) The income, estate, and gift tax deductions for charitable contributions;

(4) The tax on unrelated business income of certain types of organizations;

(5) The taxes imposed on certain prohibited transactions by pubic charities and private foundations;

(6) The income tax credit for individuals who receive retirement income from public retirement systems;

(7) Eligibility for certain tax-deferred annuities;

(8) The income tax credit for political campaign contributions; and

(9) The exclusion of certain scholarships and fellowships awarded to students who are not candidates for a degree.

Special rules for tax-exempt bonds.—The amendment permits Indian tribal governments to issue tax-exempt industrial development bonds only where the primary activities of the businesses benefitting from the bonds take place on the reservation and where substantially all of the off-reservation activities are purchasing, marketing, and similar related activities. Additionally, interest on bonds other than IDBs is exempt from tax only if substantially all of the proceeds of the obligations are used in the exercise of essentially governmental functions or for a public utility. These requirements are in addition to any other requirements imposed under the Code for tax-exempt bonds.

In general, the amendment applies to taxable years beginning after 1982.

The provisions related to tax-exempt bonds will apply to obligations of Indian tribal governments issued after the date of enactment in taxable years ending after that date.

The provisions amending the estate or gift taxes will apply to estates of individuals dying, or gifts made, after 1982.

The excise tax provisions are effective on January 1, 1983.

Conference agreement

The conference agreement follows the Senate amendment, with modifications and clarifications. First, Indian tribal governments are permitted only to issue public activity bonds, the proceeds of

which are used in an essential governmental function (such as schools, streets, and sewers). Therefore, tribal governments are not permitted to issue private activity bonds (i.e., industrial development bonds, scholarship bonds, and mortgage subsidy bonds). Second, all of the provisions will terminate after December 31, 1984. Third, the provision permitting issuance of tax-exempt bonds is effective for obligations issued after December 31, 1982, and before January 1, 1985.

Finally, the conferees wish to clarify two points. The present-law requirement that an excise tax exempt article be sold for the exclusive use of a State or local government will apply in the case of articles sold to Indian tribal governments. The tax-exempt articles must be for the Indian tribal government's exclusive use in carrying out an essential governmental function. Additionally, the requirement of consultation between the Secretary of the Treasury and the Secretary of the Interior is not to be construed as requiring the consent of the Secretary of the Interior before adoption of any regulation, ruling, or other determination made by the Secretary of the Treasury.

4. Waiver of Preemption in Case of Hawaiian Prepaid Health Care Act

Present law

The Employee Retirement Income Security Act of 1974 (ERISA) provides comprehensive rules relating to employee benefit plans, including plans providing health benefits to employees. The Act (sec. 514(a)) generally supersedes State laws insofar as they relate to employee benefit plans.

The Hawaii Act (Haw. Rev. Stat. 393–1 through 51), provides for a program of health insurance for employees. As a result of litigation, it was determined that the Hawaiian Act was preempted by ERISA (*Standard Oil Company of California* v. *Agsalud,* 633 F. 2d 760 (9th Cir. 1980), aff'd, 454 U.S. 801 (1981)).

House bill

The provision generally exempts the Hawaii Prepaid Health Care Act from preemption by ERISA. Under the provision, however, preemption is continued with respect to (1) any State tax law relating to employee benefit plans, or (2) any amendment of the Hawaii Act enacted after September 2, 1974, to the extent the amendment provides for more than the effective administration of that Act as in effect on September 2, 1974. The provision continues Federal preemption of State law with respect to matters governed by the reporting and disclosure and the fiduciary responsibility provisions of ERISA, as well as certain of the provisions of the administration and enforcement rules of ERISA (Title I, part 1, part 4, and secs. 501 through sec. 514(b)). The provision also permits the Secretary of Labor to enter into cooperative arrangements with the officials of the State of Hawaii to assist them in effectuating the policies of the provisions of the Hawaii Act that are superseded by ERISA.

The provision states that it is not to be considered a precedent for extending non-preemption to any other State law.

The provision is effective on the date of enactment.

Senate amendment

The Senate amendment generally follows the House bill except that the exemption from the ERISA preemption provision applies to the Hawaii Prepaid Health Care Act, as in effect on January 1, 1976. Additionally, the amendment requires that the Secretary of Labor conduct a study of the feasibility of extending the exemption to include other State laws which establish health care plans and report to the Congress on his findings within two years.

Conference agreement

The conference agreements follows the House bill.

5. Waiver of Preemption in Case of Multiple Employer Welfare Arrangements

Present law

The Employee Retirement Income Security Act of 1974 (ERISA) provides comprehensive rules relating to employee benefit plans, including plans providing health benefits to employees. The Act (sec. 514(a)) generally supersedes State laws insofar as they relate to employee benefit plans.

House bill

The provision generally exempts certain multiple employer welfare arrangements from the ERISA preemption provision. Under the provision, a multiple employer welfare arrangement is any plan or other arrangement established to offer welfare benefits, such as health insurance, to the employees of two or more employers. However, it continues preemption with respect to State law applying to any plan maintained pursuant to a collective bargaining agreement or maintained by a tax exempt rural electric cooperative.

In the case of a fully insured multiple employer welfare arrangement, the provision exempts from ERISA preemption any State laws that require the maintenance of specified levels of reserves and contributions in order for such an arrangement to be considered adequately funded.

In the case of a multiple employer welfare arrangement that is not fully insured, the provision exempts from ERISA preemption any State laws that regulate insurance. Notwithstanding this provision, the Secretary is authorized to determine the extent to which the ERISA preemption provision will be applied to a multiple employer welfare arrangement that is not fully insured. The Secretary's determination may be made on a case-by-case basis or a class basis.

The provision is effective on the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill.

6. Reduction in Income Tax Rate on Virgin Islands Source Income

Present law

The Treasury and the Government of the Virgin Islands take the position that present law imposes a 30-percent tax on the U.S. recipient of certain Virgin Islands source passive investment income, and that present law also imposes withholding at the source by the V.I. payor of such income. Certain taxpayers contend there is no such tax or withholding obligation.

House bill

No provision.

Senate amendment

The Senate amendment provides for a 10-percent rate of tax by the Virgin Islands when the recipient is a U.S. citizen, resident alien, or corporation and provides for a corresponding withholding obligation on the V.I. payor of such income. The amendment makes clear the Virgin Islands' right prospectively both to impose the tax and to collect it by requiring withholding. The amendment is not intended to affect disputes now pending with respect to prior years between various taxpayers and the V.I. Government as to whether under existing law the Virgin Islands can tax U.S. recipients nonresident in the Virgin Islands on passive income from Virgin Islands sources. The amendment will allow the V.I. Government to reduce this 10-percent rate in its discretion. Payments of V.I. source passive income to non-U.S. persons will continue to be subject to the tax at a 30-percent rate.

The new tax rates generally will apply to amounts received after the date of enactment. The corresponding withholding obligation will apply to payments made after the date of enactment.

Conference agreement

The conference agreement follows the House bill.

7. One-Year Extension of Highway Trust Fund Taxes

Present Law

Highway Trust Fund taxes are scheduled to expire or revert to lower tax rates after September 30, 1984. Receipts from those highway taxes that would continue after expiration of the trust fund would be deposited in the general fund of the Treasury. The exemption from the fuels tax (4 cents a gallon) for qualified taxicabs expires after December 31, 1982.

Expenditures may be made from the trust fund for authorized highway purposes through September 30, 1984.

House bill

No provision.

Senate amendment

The Highway Trust Fund is extended for one-year, through September 30, 1985. Receipts from excise taxes designated for deposit to the trust fund also is extended for one-year, through September 30, 1985. Expenditures from the trust fund for authorized purposes is extended for two years, through September 30, 1986.

Transfer of recreational motor boat fuels taxes to the Land and Water Conservation Fund also is extended for one additional year.

In addition, the refund of the taxes on motor fuels used in qualified taxicabs is extended for one-year, through December 31, 1983.

Conference agreement

The conference agreement follows the House bill.

ESTIMATED REVENUE EFFECTS OF PROVISIONS OF H.R. 5470 AS AGREED TO BY THE CONFERENCE COMMITTEE—FISCAL YEARS 1983–87

[Millions of dollars]

Provision	1983	1984	1985	1986	1987
1. Exclusion for periodic damage payments	(1)	(1)	(1)	(1)	(1)
2. Exclusion from gross income for certain foster care payments	(2)	(2)	(2)	(2)	(2)
3. Taxation of Indian tribal governments	(2)	(2)	(1)	(1)	(1)
4. Waiver of preemption in case of Hawaiian prepaid health care act	(2)	(2)	(2)	(2)	(2)
5. Waiver of preemption of ERISA in case of multiple employer welfare arrangements	(1)	(1)	(1)	(1)	(1)

(1) Negligible revenue impact.
(2) Loss of less than $5 million.

And the House agree to the same.

DAN ROSTENKOWSKI,
SAM GIBBONS,
J. J. PICKLE,
JOHN J. DUNCAN,
BILL FRENZEL,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
MALCOLM WALLOP,
RUSSELL B. LONG,
Managers on the Part of the Senate.

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97TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
No. 97-985

TAXES ON VIRGIN ISLAND SOURCE INCOME; DISABILITY BENEFITS

DECEMBER 21 (legislative day of DECEMBER 19), 1982.—Ordered to be printed

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Mr. ROSTENKOWSKI, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 7093]

The committee of conference on the disagreeing votes of the two Houses on the Senate amendments numbered 2, 3, and 4 to the bill (H.R. 7093) to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, to amend the Social Security Act to provide for a temporary period that payment of disability benefits may continue through the hearing stage of the appeals process, and for other purposes, and on the disagreeing votes of the two Houses on the House amendment to the Senate amendment numbered 1 to such bill, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 2, 3, and 4.

That the Senate recede from its disagreement to the House amendment to the Senate amendment numbered 1 and agree to the same with an amendment as follows:

In lieu to the matter proposed to be inserted by the House amendment to the Senate amendment, insert the following:

SECTION 1. INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME.

(a) IN GENERAL.—Subpart D of part III of subchapter N of chapter 1 of the Internal Revenue Code of 1954 (relating to possessions) is amended by inserting after section 934 the following new section:

"SEC. 934A. INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME.

"(a) GENERAL RULE.—For purposes of determining the tax liability incurred by citizens and resident alien individuals of the United States, and corporations organized in the United States, to the

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Virgin Islands pursuant to this title with respect to amounts received from sources within the Virgin Islands—

"(1) the taxes imposed by sections 871(a)(1) and 881 (as made applicable to the Virgin Islands) shall apply except that '10 percent' shall be substituted for '30 percent', and

"(2) subsection (a) of section 934 shall not apply to such taxes.

"(b) SUBSECTION (a) RATES NOT TO APPLY TO PRE-EFFECTIVE DATE EARNINGS.—

"(1) IN GENERAL.—Any change under subsection (a)(1), and any reduction under section 934 pursuant to subsection (a)(2), in a rate of tax imposed by section 871(a)(1) or 881 shall not apply to dividends paid out of earnings and profits accumulated for taxable years beginning before the effective date of the change or reduction.

"(2) ORDERING RULE.—For purposes of paragraph (1), dividends shall be treated as first being paid out of earnings and profits accumulated for taxable years beginning before the effective date of the change or reduction (to the extent thereof)."

(b) WITHHOLDING.—Subchapter A of chapter 3 of such code (relating to withholding of tax on nonresident aliens and foreign corporations) is amended by adding at the end thereof the following new section:

"SEC. 1444. WITHHOLDING ON VIRGIN ISLANDS SOURCE INCOME

"For purposes of determining the withholding tax liability incurred in the Virgin Islands pursuant to this title (as made applicable to the Virgin Islands) with respect to amounts received from sources within the Virgin Islands by citizens and resident alien individuals of the United States, and corporations organized in the United States, the rate of withholding tax under sections 1441 and 1442 on income subject to tax under section 871(a)(1) or 881 (as modified by section 934A) shall not exceed the rate of tax on such income under section 871(a)(1) or 881, as the case may be."

(c) TECHNICAL AMENDMENT.—Subsection (a) of section 934 of such Code is amended by inserting before the period at the end thereof "or in section 934A".

(d) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart D of part III of subchapter N of chapter 1 of such Code is amended by inserting after the item relating to section 934 the following new item:

"Sec. 934A. Income tax rate on Virgin Islands source income."

(2) The table of sections for subchapter A of chapter 3 of such Code is amended by adding at the end thereof the following new item:

"Sec. 1444. Withholding on Virgin Islands source income."

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to amounts received after the date of the enactment of this Act in taxable years ending after such date.

(2) WITHHOLDING.—The amendment made by subsection (b) shall apply to payments made after the date of the enactment of this Act.

SEC. 2. CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL.

Section 223 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Continued Payment of Disability Benefits During Appeal

"(g)(1) In any case where—

"(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

"(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

"(C) a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII), continued for an additional period beginning with the first month beginning after the date of the enactment of this subsection for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (iii) June 1984.

"(2)(A) If an individual elects to have the payment of his benefits continued for an additional period under paragraph (1), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in subparagraph (B).

"(B) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under paragraph (1) shall be subject to waiver consideration under the provisions of section 204.

"(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

"(A) on or after the date of the enactment of this subsection, or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, and

"(B) prior to October 1, 1983.".

SEC. 3. PERIODIC REVIEWS OF DISABILITY CASES.

Section 221(i) of the Social Security Act is amended—

(1) by inserting "(1)" after "(i)";

(2) by inserting ", subject to paragraph (2)" after "at least every 3 years"; and

(3) by adding at the end thereof the following new paragraph:

"(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Secretary determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Secretary shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Secretary shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Secretary shall report annually to the Committee on Finance of the Senate and the Committee on the Ways and Means of the House of Representatives with respect to the determinations made by the Secretary under the preceding sentence.".

(b) The amendments made by subsection (a) shall become effective on the date of the enactment of this Act.

SEC. 4. EVIDENTIARY HEARINGS IN RECONSIDERATIONS OF DISABILITY BENEFIT TERMINATIONS.

(a) IN GENERAL.—Section 205(b) of the Social Security Act is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end thereof the following new paragraph:

"(2) In any case where—

"(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

"(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

"(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Secretary not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Secretary (before any hearing under paragraph (1) on the issue of such entitlement) of his determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Secretary where the finding was originally made by the State agency, and shall be made by the Secretary where the finding was originally made by the Secretary. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Secretary of a finding described in subparagraph (B) which was originally made by the Secretary,

the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to reconsiderations (of findings described in section 205(b)(2)(B) of the Social Security Act) which are requested on or after such date as the Secretary of Health and Human Services may specify, but in any event not later than January 1, 1984.

SEC. 5. CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES.

The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act (as added by section 4 of this Act). For this purpose the Secretary shall—

(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so established, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsiderations.

SEC. 6. REPORT BY SECRETARY.

Section 221(i) of the Social Security Act (as amended by section 3 of this Act) is further amended by adding at the end thereof the following new paragraph:

"(3) The Secretary shall report semiannually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d), or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.".

SEC. 7. OFFSET AGAINST SPOUSES' BENEFITS ON ACCOUNT OF PUBLIC PENSIONS.

(a) ADDITIONAL EXEMPTION.—

(1) Section 334 of the Social Security Amendments of 1977 (Public Law 95-216) is amended by adding at the end thereof the following new subsection:

"(h) In addition, the amendments made by the preceding provisions of this section shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act, to an individual—

"(1) to whom there is payable for any month prior to July 1983 (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act); and

"(2) who at the time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g)—

"(A) meets the dependency test of one-half support set forth in paragraph (1)(C) of such subsection (c) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (b) or (c), or

"(B) meets the dependency test of one-half support set forth in paragraph (1)(D) of such subsection (f) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (e), (f), or (g).".

(2) Section 334(f) of such Act is amended by striking out "The amendments" and inserting in lieu thereof "Subject to subsections (g) and (h), the amendments".

(b) REPORT BY SECRETARY.—The Secretary of Health and Human Services shall conduct a study of the provisions of title II of the Social Security Act which require an offset against spouses' and surviving spouses' benefits on account of public pensions, as added by section 334 of the Social Security Amendments of 1977 (taking into account the amendment made by subsection (a) of this section as well as the provisions of such section 334), and shall report to the Congress, no later than May 15, 1983, his recommendations for any permanent legislative changes in such provisions (or in the applicability of such provisions) which he may consider appropriate.

(c) TECHNICAL AMENDMENTS.—Subsections (b)(4)(A), (c)(2)(A), (e)(8)(A), (f)(2)(A) and (g)(4)(A) of section 202 of the Social Security Act are each amended by inserting "for purposes of this title" after "as defined in section 210".

(d) EFFECTIVE DATE.—The amendments made by subsections (a)

and (c) of this section shall be effective with respect to monthly insurance benefits for months after November 1982.

And the House agree to the same.

DAN ROSTENKOWSKI,
J. J. PICKLE,
ANDREW JACOBS, Jr.,
RICHARD GEPHARDT,
JAMES SHANNON,
BILL ARCHER,
JIM MARTIN,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
WILLIAM L. ARMSTRONG,
RUSSELL B. LONG,
HARRY F. BYRD, Jr.,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the Senate amendments numbered 2, 3, and 4 to the bill (H.R. 7093) to amend the Internal Revenue Code of 1954 to reduce the rate of certain taxes paid to the Virgin Islands on Virgin Islands source income, to amend the Social Security Act to provide for a temporary period that payment of disability benefits may continue through the hearing stage of the appeals process, and for other purposes, and on the disagreeing votes of the two Houses on the House amendment to the Senate amendment numbered 1 to such bill, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

INCOME TAX RATE ON VIRGIN ISLANDS SOURCE INCOME

Present law.—The Virgin Islands Government contends that payments of passive investment income by V.I. persons to U.S. persons are subject to a 30-percent tax (on the gross amount of the payment) and a corresponding withholding obligation. Certain U.S. receipents of such income contend that such payments are subject to neither tax nor withholding. (Similiar payments to foreign persons are clearly subject to the tax and the withholding obligation.)

Senate position.—The Senate language (which is identical to the original House language) provides that the rate of V.I. tax on payments of passive investment income from V.I. persons to U.S. persons shall not exceed 10 percent. This treatment would apply to dividend payments out of earnings and profits accumulated in taxable years beginning on or after the date of enactment. The Government of the Virgin Islands would be able to reduce this 10 percent maximum rate in its discretion. The withholding obligation of the payer would in every case correspond to the substantive tax liability of the recipient. Payments to foreign persons would continue to be subject to the 30-percent tax and corresponding withholding.

House amendment.—The House amendment follows the Senate position, but makes two technical changes.

First, the House amendment makes it clear that Congress is taking neither side in the current dispute between U.S. persons and the V.I. Government by striking references to "reductions" in tax.

Second, the House amendment makes it clear that the Virgin Islands will be able to impose and require withholding of a tax of up to 10 percent on payments of passive income to U.S. persons.

Conference agreement.—The conference agreement follows the House amendment with the two technical changes.

CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL

Present law.—A social security disability insurance (DI) beneficiary who is found to be no longer disabled under the provisions of the Social Security Act continues to receive benefits for two months after the month in which his eligibility is determined to have ceased. (As an administrative practice, individuals are now generally found to be "no longer disabled" no earlier than the month in which the individual is notified of the termination decision.)

The individual may request a reconsideration of the decision, and if the termination is upheld, he may appeal the decision to an Administrative Law Judge (ALJ). The individual is not presently eligible for benefits during the appeals process. However, if the initial termination decision is reversed, benefits are paid retroactively.

House bill.—Upon request of the beneficiary, DI benefits and Medicare coverage would continue to be paid through the month preceding the month of the decision pursuant to a hearing before an Administrative Law Judge. These additional DI benefits would be subject to recovery as overpayments, subject to the same waiver provisions now in current law, if the initial termination decision is upheld.

The provision is effective for benefit payments beginning with the first month after the date of enactment for cases where a termination decision has been made before October 1, 1983. In all cases such benefit payments would cease no later than June 1984. For cases where a termination decision was made before the date of enactment and a timely appeal is pending or is filed, benefits could be paid under this provision, but no lump sum back payments would be authorized.

Senate amendment.—Identical to House provision.

Cost effect.—According to the Congressional Budget Office this provision will increase outlays by $75 million in fiscal years 1983–85. There are no costs beyond those years.

Conference agreement.—The conference agreement follows the House provision.

PERIODIC REVIEWS OF DISABILITY CASES

Present law.—The Social Security Disability Amendments of 1980 required the Secretary of Health and Human Services to review the cases of current disability beneficiaries at least once every three years, beginning in January, 1982, to determine whether they are still disabled. Beneficiaries judged to be permanently disabled were to be excluded from this review.

House bill.—The House bill authorizes the Secretary to slow down the number of cases sent to the State disability agencies for re-examination below the rate required by the 1980 amendments. The Secretary's determination of the appropriate numbers of cases to be reviewed in each State shall be based on consideration of the backlogs of such pending reviews, projected numbers of new applicants for disability benefits, and projected staffing levels of State

agencies. The State agency must demonstrate a good faith effort to meet appropriate staffing requirements and to process reviews in a timely fashion. The Secretary is to report annually to the House Committee on Ways and Means and the Senate Finance Committee on the determinations made under this section.

Senate amendment.—Same as House bill.

Cost effect.—Negligible.

Conference agreement.—The conference agreement follows the House provision.

REPORT BY SECRETARY

Present law.—There is no requirement for periodic reports to the Congress by the Secretary of Health and Human Services with respect to continuing disability investigations.

House bill.—Requires the Secretary of HHS to report to the Senate Finance Committee and the House Committee on Ways and Means semiannually on the number of: continuing eligibility reviews, termination decisions, reconsideration requests, and termination decisions which are overturned at the reconsideration or hearing level.

The provision is effective upon enactment.

Senate amendment.—Identical to House provision.

Cost effect.—None.

Conference agreement.—The conference agreement follows the House provision.

EVIDENTIARY HEARINGS IN RECONSIDERATIONS OF DISABILITY BENEFIT TERMINATIONS

Current law.—The Social Security Act provides for initial determinations of disability by the State agencies authorized by the Secretary to make disability decisions, and for continuing reviews of disability by the Secretary or the State agency. The law also provides for a hearing by the Secretary, and subsequent judicial review, for any individual dissatisfied with determinations made by the State agencies or the Secretary.

House bill.—The House bill requires the Secretary to provide, beginning no later than January 1, 1984, opportunity for a face-to-face, evidentiary hearing prior to reconsideration of decisions to terminate benefits for disability beneficiaries. This requirement does not supplant or affect in any way the requirement of existing law for a hearing by an Administrative Law Judge. The provision applies only to reconsiderations of determinations that the beneficiary is not disabled because the physical or mental impairment on which his eligibility is based is found to have ceased, not to have existed or to no longer be disabling.

Senate amendment.—No provision.

Cost effect.—Negligible.

Conference agreement.—The conference agreement follows the House provision.

CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES

Present law.—The Social Security Act provides for initial determinations to be made by the State agency or the Secretary, and for hearings conducted by the Secretary and judicial review after such hearings for those individuals dissatisfied with the earlier decisions.

House bill.—The House bill requires the Secretary to take all steps necessary to insure public understanding of the importance Congress attaches to the face-to-face reconsideration hearings provided in Section 4. The Secretary is required to assure that beneficiaries will receive reasonable notice and information as to the time and place of the reconsideration, of the opportunities to be represented by counsel and to introduce evidence at the reconsideration, and of the importance of submitting all available evidence concerning the case at the reconsideration.

Senate bill.—No provision.

Cost effect.—None.

Conference agreement.—The conference agreement follows the House provision.

MEDICAL EVIDENCE

Present law.—Although current law does not specify a time period for the collection of medical evidence, current procedures, detailed in guidelines used by State agencies, require the Secretary to seek to obtain all medical evidence from all persons or institutions which have diagnosed or treated the individual within the 12-month period preceding the review of an individual's continuing eligibility.

Under both the regulations and the guidelines used by State agencies, an individual must meet the prevailing requirements for eligibility and no medical improvement needs to be shown to find an individual no longer eligible for disability benefits.

House bill.—No provision.

Senate amendment.—Requires the Secretary to make every reasonable effort to seek and obtain all relevant medical evidence from all persons or institutions which have diagnosed or treated such individuals with respect to his impairment or impairments within the preceding 12-month period. Requires the Secretary to consider all evidence available in the individual's case file relating to such impairment or impairments in making a determination on the case. States that nothing in the preceding sentence shall preclude the Secretary from finding an individual to be ineligible under the terms of the Social Security Act even if such individual's medical condition has not improved or otherwise changed since any prior determination of his disability.

Cost effect.—No estimate made.

Conference agreement.—The conference agreement does not include the Senate provision.

PUBLIC PENSION OFFSET

Present law.—Prior to 1977, social security spouse's benefits were available only to men, who could meet a dependency test and to

women, all of whom were presumed to be dependent. These provisions were declared in March 1977 (*Califano v. Goldfarb*) unconstitutional since they applied differently to men and women.

The Social Security Amendments of 1977 responded to the Goldfarb decision by providing, except for beneficiaries who are covered by the public pension offset exception clause, that social security dependents' benefits which are paid to spouses of retired, disabled, or deceased workers are reduced dollar-for-dollar by an amount equal to any public pension which the spouse receives as a result of his or her own employment by a Federal, state or local government which is not covered by social security. (Non-covered government employment is defined as employment not covered under section 210 of the Social Security Act on the last day the spouse was employed by the government.)

Under the exception clause (which expired December 1, 1982), the offset would not apply if: (1) a beneficiary is either receiving or eligible to receive a government pension based on non-covered employment for any month in the period December 1977 through November 1982, and (2) the beneficiary, at the time of filing for social security dependents' benefits, meets all the requirements for entitlement as they were in effect and being administered in January 1977. The law in January 1977 required men, but not women, to prove they were dependent on their spouses for at least one-half of their support in order the qualify for the spouse benefit.

House bill.—The House bill provides that during the 60 month period beginning with December 1982, the amount of the public pension used for purposes of the public pension offset shall be an amount equal to one-third of the public pension.

Senate amendment.—No provision.

Cost effect.—According to unofficial estimates of the Congressional Budget Office, the House bill would increase outlays by the following amounts (by fiscal years, in millions of dollars):

1983	15
1984	40
1985	65
1986	85
1987	108
1988	30

Conference agreement.—The Conferees agreed that, in lieu of a modification of the public pension offset clause, the public pension offset would not apply to an individual who becomes eligible for a public pension prior to July 1983 if that individual is dependent upon his or her spouse for one-half support. The one-half support test would be applied according to the pre-1977 law, except that it would apply to both men and women.

The amendment would also require the Secretary of Health and Human Services to study the pension offset provisions and to report his recommendation for any permanent legislation that may be appropriate by May 15, 1983.

In addition, the Conferees agreed to specify the definition of non-covered government employment as government employment

which on the last day the spouse was employed, was not covered employment for purposes of title II of the Social Security Act.

DAN ROSTENKOWSKI,
J. J. PICKLE,
ANDREW JACOBS, Jr.,
RICHARD GEPHARDT,
JAMES SHANNON,
BILL ARCHER,
JIM MARTIN,
Managers on the Part of the House.

BOB DOLE,
BOB PACKWOOD,
WILLIAM L. ARMSTRONG,
RUSSELL B. LONG,
HARRY F. BYRD, Jr.,
Managers on the Part of the Senate.

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97TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
No. 97-986

TECHNICAL CORRECTIONS ACT OF 1982

DECEMBER 21 (legislative day of DECEMBER 19), 1982.—Ordered to be printed

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Mr. ROSTENKOWSKI, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. ~~6057~~ 6056]

The committee of conference on the disagreeing votes of the two Houses on the Senate amendments numbered 9, 15, 18, 24, and 27 to the bill (H.R. 6056) to make technical corrections related to the Economic Recovery Tax Act of 1981, the Crude Oil Windfall Profit Tax Act of 1980, and the Installment Sales Revision Act of 1980, and on the disagreeing votes of the two Houses on the House amendments to the Senate amendments numbered 1, 10, 14, 16, 17, 26, 30, 31, 33, 34, 36, and 37 to such bill, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 9 and 15.

That the House recede from its disagreement to the amendments of the Senate numbered 24 and 27; and agree to the same.

That the Senate recede from its disagreement to the House amendments to the Senate amendments numbered 1, 10, 14, 17, 26, 33, 34, 36, and 37; and agree to the same.

That the Senate recede from its disagreement to the House amendment to the Senate amendment numbered 16 and agree to the same with an amendment as follows:

In lieu of striking out the matter proposed to be stricken out by the House amendment, strike out line 24 on page 7 of the Senate amendments and all that follows down through line 23 on page 8 of the Senate amendments and, in lieu of inserting the matter proposed to be inserted by the House amendment, insert the following:

(ii) ELECTION BY TAXPAYER OF RETROACTIVE APPLICATION.—

(I) RETROACTIVE APPLICATION.—If the taxpayer so elects, the amendments made by subparagraphs (B) and (C) shall apply as if included within the amendments made by title V of the Economic Recovery Tax Act of 1981.

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(II) ADDITIONAL CHOICES WITH RESPECT TO 1981.—If the taxpayer held a foreign currency contract after December 31, 1980, and before June 24, 1981, and such taxpayer makes an election under subclause (I), such taxpayer may revoke any election made under section 508(c) or 509(a) of such Act, and may make an election under section 508(c) or 509(a) of such Act.

(III) ADDITIONAL CHOICES APPLY TO ALL REGULATED FUTURES CONTRACTS.—Except as provided in subclause (IV), in the case of any taxpayer who makes an election under subclause (I), any election under section 508(c) or 509(a) of such Act or any revocation of such an election shall apply to all regulated futures contracts (including foreign currency contracts).

(IV) SECTION 509(a) (3) AND (4) NOT TO APPLY TO FOREIGN CURRENCY CONTRACTS.—Paragraphs (3) and (4) of section 509(a) of such Act shall not apply to any foreign currency contract.

(V) TIME FOR MAKING ELECTION OR REVOCATION.—Any election under subclause (I) and any election or revocation under subclause (II) may be made only within the 90-day period beginning on the date of the enactment of this Act. Any such action, once taken, shall be irrevocable.

(VI) DEFINITIONS.—For purposes of this clause, the terms "regulated futures contract" and "foreign currency contract" have the same respective meanings as when used in section 1256 of the Internal Revenue Code of 1954 (as amended by this Act).

(iii) ELECTION BY TAXPAYER WITH RESPECT TO POSITIONS HELD DURING TAXABLE YEARS ENDING AFTER MAY 11, 1982.—In lieu of the election under clause (ii), a taxpayer may elect to have the amendments made by subparagraphs (B) and (C) applied to all positions held in taxable years ending after May 11, 1982, except that the provisions of section 509(a) (3) and (4) of the Economic Recovery Tax Act of 1981 shall not apply.

And the House agree to the same.

That the House recede from its disagreement to the Senate amendment numbered 18 and agree to the same with an amendment as follows:

In lieu of inserting the matter proposed to be inserted by the Senate amendment numbered 18, insert the following:

(4) CREDIT OR REFUND FOR BENEFICIARIES OF TRUST OWNING ROYALTY INTERESTS.—

(A) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application) is amended by adding at the end thereof the following new section:

"SEC. 6430. CREDITOR REFUND OF WINDFALL PROFIT TAXES TO CERTAIN TRUST BENEFICIARIES.

"(a) GENERAL RULE.—That portion of the tax imposed by section 4986 (relating to crude oil windfall profit tax) which is paid by any trust with respect to any qualified beneficiary's allocable trust production shall be treated as an overpayment of such tax by such qualified beneficiary. Any such overpayment shall be credited

against the tax imposed by section 4986 or refunded to such qualified beneficiary.

"(b) COORDINATION WITH ROYALTY EXEMPTION.—

"(1) IN GENERAL.—If the aggregate amount of the allocable trust production of any qualified beneficiary for any calendar year exceeds such beneficiary's unused exempt royalty limit for such calendar year, then the amount treated as an overpayment under subsection (a) with respect to such qualified beneficiary shall be reduced by an amount which bears the same ratio to the amount which (but for this paragraph) would be so treated as—

"(A) the amount of such excess, bears to

"(B) the aggregate amount of such allocable trust production.

"(2) UNUSED EXEMPT ROYALTY LIMIT.—The unused exempt royalty limit of any qualified beneficiary for any calendar year is the excess of—

"(A) the number of days in such calendar year, multiplied by the limitation in barrels determined under the table contained in section 4994(f)(2)(A)(ii), over

"(B) the amount of exempt royalty oil (within the meaning of section 4994(f))—

"(i) with respect to which such qualified beneficiary is the producer, and

"(ii) which is removed from the premises during such calendar year.

"(3) ALLOCATION.—Rules similar to the rules of paragraphs (2), (3), and (4) of section 6429(c) shall apply to the amount determined under paragraph (2)(A).

"(c) ALLOCABLE TRUST PRODUCTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'allocable trust production' means, with respect to any qualified beneficiary, the qualified royalty production of any trust which—

"(A) is removed from the premises during the calendar year, and

"(B) is allocated to such qualified beneficiary under paragraph (2).

"(2) ALLOCATION OF PRODUCTION.—

"(A) IN GENERAL.—The qualified royalty production of a trust for any calendar year shall be allocated between the trust and its income beneficiaries as follows:

"(i) there shall be allocated to the trust an amount of production based on the amount of any reserve for depletion for the calendar year with respect to qualified royalty production, and

"(ii) production not allocated under clause (i) shall be allocated between the trust and the income beneficiaries in accordance with their respective shares of the adjusted distributable net income for the calendar year.

"(B) DEFINITION AND SPECIAL RULE.—For purposes of this paragraph—

"(i) ADJUSTED DISTRIBUTABLE NET INCOME.—The term 'adjusted distributable net income' means distributable net income (as defined in section 643) for the calendar year reduced by the excess (if any) of—

"(I) any reserve for depletion for such year with respect to qualified royalty production, over

"(II) the amount allowable as deduction for depletion to the trust for such year with respect to qualified royalty production.

"(ii) ALLOCATION PRO RATA FROM EACH UNIT OF PRODUCTION.—Allocations under subparagraph (A) shall be treated as made pro rata from each unit of the qualified royalty production.

"(3) PRODUCTION FROM TRANSFERRED PROPERTY.—

"(A) IN GENERAL.—The allocable trust production of any qualified beneficiary shall not include any production attributable to an interest in property which has been transferred after June 9, 1981, in a transfer which—

"(i) is described in section 613A(c)(9)(A), and

"(ii) is not described in section 613A(c)(9)(B).

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply in the case of any transfer so long as the transferor and the qualified beneficiary are required by subsection (b)(3) to share the amount determined under subsection (b)(2)(A). The preceding sentence shall apply to the transfer of any property only if the production attributable to the property was allocable trust production or qualified royalty production of the transferor.

"(d) DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED BENEFICIARY.—The term 'qualified beneficiary' means any individual or estate which is a beneficiary of any trust which is a producer.

"(2) QUALIFIED ROYALTY PRODUCTION.—The term 'qualified royalty production' means, with respect to any person, taxable crude oil (within the meaning of section 4991(a)) which is attributable to an economic interest of such person other than an operating mineral interest (within the meaning of section 614(d)). Such term does not include taxable crude oil attributable to any overriding royalty interest, production payment, net profits interest, or similar interest of the person which—

"(A) is created after June 9, 1981, out of an operating mineral interest in property which is proven oil or gas property (within the meaning of section 613A(c)(9)(A)) on the date such interest is created, and

"(B) is not created pursuant to a binding contract entered into before June 10, 1981.

"(3) PRODUCER.—The term 'producer' has the meaning given to such term by section 4996(a)(1).

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section."

(B) ALLOCATION OF LIMITATION BETWEEN EXEMPT ROYALTY OIL AND ALLOCABLE TRUST PRODUCTION.—Paragraph (2) of section 4994(f) (relating to royalty limit) is amended—

(i) by striking out "A qualified" in subparagraph (A) and inserting in lieu thereof "Except as provided in subparagraph (C), a qualified", and

(ii) by adding at the end thereof the following new subparagraph:

"(C) ELECTION TO INCREASE SECTION 6430 ROYALTY CREDIT BY REDUCING EXEMPTION UNDER THIS SUBSECTION.—Any qualified royalty owner who is a qualified beneficiary (within the meaning of section 6430(d)(1)) for any quarter may elect (at such time and in such manner as the Secretary may prescribe by regulations) to reduce by any amount the qualified royalty owner's royalty limit determined under subparagraph (A) for such quarter (after the application of paragraph (3)(B)).".

(C) TECHNICAL AMENDMENT.—Subparagraph (B) of section 6654(g)(3) (relating to estimated tax computed after application of credits against tax) is amended by inserting "or 6430" after "section 6429".

(D) CONFORMING AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by adding at the end thereof the following new item:

"Sec. 6430. Credit or refund of windfall profit taxes to certain trust beneficiaries."

(E) EFFECTIVE DATE.—

"(i) IN GENERAL.—Except as provided in clause (ii), the amendments made by this paragraph shall apply with respect to calendar years beginning after December 31, 1981.

"(ii) ESTIMATED TAX.—The amendment made by subparagraph (C) shall take effect on January 1, 1982.

And the Senate agree to the same.

That the Senate recede from its disagreement to the House amendment to the Senate amendment numbered 30 and agree to the same with an amendment as follows:

In the subsection (d)(1)(B)(i) proposed to be inserted by the House amendment, strike out "October 19, 1982" and insert in lieu thereof "September 30, 1982".

And the House agree to the same.

That the Senate recede from its disagreement to the House amendments to the Senate amendment numbered 31 and agree to the same with an amendment as follows:

In lieu of inserting the section 306 proposed to be inserted by the first of the House amendments to the Senate amendment numbered 31, insert the following:

SEC. 306. TECHNICAL AMENDMENTS TO THE REVENUE PROVISIONS OF THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982.

(a) AMENDMENTS RELATED TO TITLE II.—

(1) AMENDMENTS RELATED TO SECTION 201.—

(A) Section 201 of the Tax Equity and Fiscal Responsibility Act of 1982 is Amended—

(i) by redesignating the second subsection (c) as subsection (d), and

(ii) by striking out "subsection (c)(1)" in subsection (e)(2) and inserting in lieu thereof "subsection (d)(1)".

(B) Clause (ii) of section 55(e)(5)(B) (defining qualified investment income) is amended by striking out "net capital

gain" and inserting in lieu thereof "capital gain net income".

(C) Subparagraph (B) of section 55(d)(2) (relating to adjustments to net operating loss computation) is amended by striking out "subparagraph (A)" and inserting in lieu thereof "paragraph (1)".

(2) AMENDMENT RELATED TO SECTION 204.—Paragraph (1) of section 291(a) (relating to 15-percent reduction for certain preference items) is amended by adding at the end thereof the following new sentence: "Under regulations prescribed by the Secretary, the provisions of this paragraph shall not apply to the disposition of any property to the extent section 1250(a) does not apply to such disposition by reason of section 1250(d)."

(3) AMENDMENT RELATED TO SECTION 205.—Paragraph (3) of section 48(q) (relating to basis adjustment to section 38 property) is amended by striking out "paragraphs (1) and (2)" and inserting in lieu thereof "paragraphs (1) and (2) of this subsection and paragraph (5) of subsection (d)".

(4) AMENDMENTS RELATED TO SECTION 208.—

(A) Subsection (d) of section 208 of such Act is amended—

(i) by striking out "described in section 1381(a)" in paragraph (3)(E)(i) and inserting in lieu thereof "engaged in the furnishing of electric energy to persons in rural areas", and

(ii) by inserting ", or section 168(f)(8)(J) of such Code, as added by subsection (b)(4)" after "as added by subsection (a)(1)" in paragraph (5) thereof.

(B) Subsection (d) of section 208 of such Act (relating to effective dates) is amended by adding at the end thereof the following new paragraph:

"(7) COORDINATION WITH AT RISK RULES.—Subparagraph (J) of section 168(f)(8) of the Internal Revenue Code of 1954 (as added by subsection (b)(4)) shall take effect as provided in such subparagraph (J)."

(C) Subparagraph (C) of section 208(d)(3) of such Act (defining transitional safe harbor lease property) is amended to read as follows:

"(C) AUTOMOTIVE MANUFACTURING PROPERTY.—

"(i) IN GENERAL.—Property is described in this subparagraph if—

"(I) such property is used principally by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacture of automobiles or light-duty trucks,

"(II) such property is automotive manufacturing property, and

"(III) such property would be described in subparagraph (A) if 'October 1' were substituted for 'January 1'.

"(ii) LIGHT-DUTY TRUCK.—For purposes of this subparagraph, the term 'light-duty truck' means any truck with a gross vehicle weight of 13,000 pounds or less. Such term shall not include any truck tractor.

"(iii) AUTOMOTIVE MANUFACTURING PROPERTY.—For purposes of this subparagraph, the term 'automotive manufacturing property' means machinery, equipment, and special tools of the type included in the former asset depreciation range guideline classes 37.11 and 37.12.

"(iv) SPECIAL TOOLS USED BY CERTAIN VENDORS.—For purposes of this subparagraph, any special tools owned by a taxpayer described in subclause (I) of clause (i) which are used by a vendor solely for the production of component parts for sale to the taxpayer shall be treated as automotive manufacturing property used directly by such taxpayer."

(5) AMENDMENT RELATED TO SECTION 211.—Paragraph (2) of section 211(e) of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to effective date for foreign tax credit for taxes on oil and gas income) is amended to read as follows:

"(2) Retention of old sections 907(b) and 904(f)(4) where taxpayer had separate basket foreign loss.—

"(A) IN GENERAL.—If, after applying old sections 907(b) and 904(f)(4) to a taxable year beginning before January 1, 1983, the taxpayer had a separate basket foreign loss, such loss shall not be recaptured from income of a kind not taken into account in computing the amount of such separate basket foreign loss more rapidly than ratably over the 8-year period beginning with the first taxable year beginning after December 31, 1982.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) The term 'separate basket foreign loss' means any foreign loss attributable to activities taken into account (or not taken into account) in determining foreign oil related income (as defined in old section 907(c)(2)).

"(ii) An 'old' section is such section as in effect on the day before the date of the enactment of this Act."

(6) AMENDMENTS RELATED TO SECTION 222.—

(A) The last sentence of paragraph (2) of section 222(f) of such Act is amended by inserting ", except that in applying such section both direct and indirect ownership of stock shall be taken into account" before the period at the end thereof.

(B)(i) Paragraph (3) of section 312(j) (relating to earnings and profits of foreign investment companies) is amended by striking out "in partial liquidation or".

(ii) The heading for paragraph (3) of section 312(j) is amended to read as follows.".

"(3) REDEMPTIONS.—".

(7) AMENDMENT RELATED TO SECTION 223.—Subparagraph (B) of section 223(b)(2) of such Act (relating to effective date for changes in tax treatment of distributions of appreciated property in redemption of stock) is amended to read as follows:

"(B) either before October 21, 1982, or within 90 days after the date of such ruling."

(8) AMENDMENTS RELATED TO SECTION 224.—

(A)(i) Subsection (h) of section 338 (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraphs:

"(8) TARGET NOT TREATED AS MEMBER OF AFFILIATED GROUP.—Except as otherwise provided in paragraph (9) or in regulations prescribed under this paragraph, the target corporation shall not be treated as a member of an affiliated group with respect to the sale described in subsection (a)(1).

"(9) Elective recognition of gain or loss by target corporation, together with nonrecognition of gain or loss on stock sold by selling consolidated group.—

"(A) IN GENERAL.—Under regulations prescribed by the Secretary, an election may be made under which if—

"(i) the target corporation was, before the transaction, a member of the selling consolidated group, and

"(ii) the target corporation recognizes gain or loss with respect to the transaction as if it sold all of its assets in a single transaction,

then the target corporation shall be treated as a member of the selling consolidated group with respect to such sale, and (to the extent provided in regulations) no gain or loss will be recognized on stock sold or exchanged in the transaction by members of the selling consolidated group.

"(B) SELLING CONSOLIDATED GROUP.—For purposes of subparagraph (A), the term 'selling consolidated group' means any group of corporations which (for the taxable period which includes the transaction)—

"(i) includes the target corporation, and

"(ii) files a consolidated return.

(ii) If—

(I) any portion of a qualified stock purchase is pursuant to a binding contract entered into on or after the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982, and on or before the date of the enactment of this Act, and

(II) the purchasing corporation establishes by clear and convincing evidence that such contract was negotiated on the contemplation that, with respect to the deemed sale under section 338 of the Internal Revenue Code of 1954, the target corporation would be treated as a member of the affiliated group which includes the selling corporation.

then the amendment made by clause (i) shall not apply to such qualified stock purchase.

(B)(i) Subsection (d) of section 224 of such Act is amended by adding at the end thereof the following new paragraphs:

"(4) EXTENSION OF TIME FOR MAKING ELECTIONS; REVOCATION OF ELECTIONS.—

"(A) EXTENSION.—The time for making an election under section 338 of such Code shall not expire before the close of February 28, 1983.

"(B) REVOCATION.—Any election made under section 338 of such Code may be revoked by the purchasing corporation if revoked before March 1, 1983.

"(5) RULES FOR ACQUISITIONS DESCRIBED IN PARAGRAPH (2).—

"(A) IN GENERAL.—For purposes of applying section 338 of such Code with respect to any acquisition described in paragraph (2)—

"(i) the date selected under subparagraph (B) of this paragraph shall be treated as the acquisition date,

"(ii) a rule similar to the last sentence of section 334(b)(2) of such Code (as in effect on August 31, 1982) shall apply, and

"(iii) subsections (e), (f), and (i) of such section 338, and paragraphs (4), (6), (8), and (9) of subsection (h) of such section 338, shall not apply.

"(B) SELECTION OF ACQUISITION DATE BY PURCHASING CORPORATION.—The purchasing corporation may select any date for purposes of subparagraph (A)(i) if such date—

"(i) is after the later of June 30, 1982, or the acquisition date (within the meaning of section 338 of such Code without regard to this paragraph), and

"(ii) is on or before the date on which the election described in paragraph (2)(C) is made."

(ii) Subparagraph (A) of section 224(d)(2) of such Act is amended by striking out "under paragraph (1)" and inserting in lieu thereof "(within the meaning of section 338 of such Code without regard to paragraph (5) of this subsection)".

(9) AMENDMENTS RELATED TO SECTION 231.—

(A) Clause (ii) of section 263(g)(2)(B) (defining interest and carrying charges) is amended by striking out "section 1232(a)(4)(A)" and inserting in lieu thereof "section 1232(a)(3)(A)".

(B) Section 1232 (relating to bonds and other evidences of indebtedness) is amended by redesignating subsection (d) as subsection (c).

(C)(i) The next to the last sentence of section 1232(b)(2) (defining issue price) is amended by striking out "(other than a bond or other evidence of indebtedness or an investment unit issued pursuant to a plan of reorganization within the meaning of section 368(a)(1) or an insolvency reorganization within the meaning of section 371 or 374)".

(ii) Subsection (b) of section 1232 is amended by adding at the end thereof the following new paragraph:

"(4) SPECIAL RULE FOR EXCHANGE OF BONDS IN REORGANIZATIONS.—

"(A) IN GENERAL.—If—

"(i) any bond is issued pursuant to a plan of reorganization within the meaning of section 368(a)(1) for another bond (hereinafter in this paragraph referred to as the 'old bond'), and

"(ii) the fair market value of the old bond is less than its adjusted issue price,

then, for purposes of the next to the last sentence of paragraph (2), the fair market value of the old bond shall be treated as equal to its adjusted issue price.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) BOND.—The term 'bond' includes any other evidence of indebtedness and an investment unit.

"(ii) ADJUSTED ISSUE PRICE.—

"(I) IN GENERAL.—The adjusted issue price of the old bond is its issue price, increased by the portion of any original issue discount previously includible in the gross income of any holder (without regard to subsection (a)(6) or (b)(4) of section 1232A (or the corresponding provisions of prior law)).

"(II) SPECIAL RULE FOR APPLYING SECTION 163(e).—For purposes of section 163(e), the adjusted issue price of the old bond is its issue price, increased by any original issue discount previously allowed as a deduction."

(iii) For purposes of paragraph (4) of section 1232(b) of the Internal Revenue Code of 1954 (as added by clause (ii)), any insolvency reorganization within the meaning of section 371 or 374 of such Code shall be treated as a reorganization within the meaning of section 368(a)(1) of such Code.

(iv) The amendments made by this subparagraph shall apply to evidences of indebtedness issued after December 13, 1982; except that such amendments shall not apply to any evidence of indebtedness issued after such date pursuant to a written commitment which was binding on such date and at all times thereafter.

(10) AMENDMENT RELATED TO SECTION 235.—Section 235(g)(5) of such Act is amended by striking out "section 253" and inserting in lieu thereof "section 242".

(11) AMENDMENT RELATED TO SECTION 236.—Subsection (c) of section 236 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to effective date) is amended by adding at the end thereof the following new paragraph:

"(3) Treatment of certain renegotiations.—If—

"(A) the taxpayer after August 13, 1982, and before September 4, 1982, borrows money from a government plan (as defined in section 219(e)(4) of the Internal Revenue Code of 1954),

"(B) under the applicable State law, such loan requires the renegotiation of all outstanding prior loans made to the taxpayer under such plan, and

"(C) the renegotiation described in subparagraph (B) does not change the interest rate on, or extend the duration of, any such outstanding prior loan,

then the renegotiation described in subparagraph (B) shall not be treated as a renegotiation, extension, renewal, or revision for purposes of paragraph (1). If the renegotiation described in subparagraph (B) does not meet the requirements of subparagraph (C) solely because it extends the duration of any such outstand-

ing prior loan, the requirements of subparagraph (C) shall be treated as met with respect to such renegotiation if, before April 1, 1983, such extension is eliminated."

(12) AMENDMENT RELATED TO SECTION 237.—Paragraph (2) of section 401(d) (as redesignated by section 237 of the Tax Equity and Fiscal Responsibility Act of 1982) is amended by striking out "paragraph (9)(B)" and inserting in lieu thereof "paragraph (1)(B)".

(13) AMENDMENT RELATED TO SECTION 266.—Section 266(c)(3) of such Act is amended by striking out "section 103(f)(2)(C)" and inserting in lieu thereof "section 101(f)(2)(C)".

(14) AMENDMENT RELATED TO SECTION 283.—Section 283(b)(2)(B) of such Act (relating to liability for tax and method of payment) is amended by striking out "January 18" and inserting in lieu thereof "February 17".

(b) AMENDMENTS RELATED TO TITLE III.—

(1) AMENDMENTS RELATED TO SECTION 302.—

(A) Subsection (d) of section 31 (relating to year for which credit allowed) is amended to read as follows:

"(d) YEAR FOR WHICH CREDIT ALLOWED.—

"(1) WAGES.—Any credit allowed—

"(A) by subsection (a) shall be allowed for the taxable year beginning in the calendar year in which the amount is withheld, or

"(B) by subsection (c) shall be allowed for the taxable year beginning in the calendar year in which the wages are received.

For purposes of this paragraph, if more than 1 taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

"(2) INTEREST, DIVIDENDS, AND PATRONAGE DIVIDENDS.—Any credit allowed by subsection (b) shall be allowed for the taxable year of the recipient of the income in which the amount is received."

(B) Paragraph (4) of section 3(i) of the Subchapter S Revision Act of 1982 is hereby repealed.

(2) AMENDMENT RELATED TO SECTION 310.—Subsection (d) of section 310 of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to effective date for requirement that obligations be registered) is amended by adding at the end thereof the following new paragraph:

"(4) EFFECTIVE DATE FOR TAX-EXEMPT OBLIGATIONS.—In the case of obligations the interest on which is exempt from tax (determined without regard to the amendments made by this section)—

"(A) under section 103 of the Internal Revenue Code of 1954, or

"(B) under any other provision of law (without regard to the identity of the holder),

the amendments made by this section shall apply only to obligations issued after June 30, 1983. The preceding sentence shall not apply in the case of any obligation which under the Internal Revenue Code of 1954 (as in effect on the day before the

date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) was required to be in registered form."

(3) AMENDMENT RELATED TO SECTION 336.— Section 7701(a) (relating to definitions) is amended by redesignating paragraph (38) (as added by section 336(a) of the Tax Equity and Fiscal Responsibility Act of 1982) as paragraph (39).

(4) AMENDMENT RELATED TO SECTION 339.—Subparagraph (B) of section 6038A(c)(2) (defining controlled group) is amended by inserting ", (b)(2)(C)," after "(a)(4)".

(5) AMENDMENT RELATED TO SECTION 354.—Paragraph (23) of section 501(c) (relating to exempt organizations) is amended by striking out "25 percent" and inserting in lieu thereof "75 percent".

(c) AMENDMENTS RELATED TO TITLE IV.—

(1) AMENDMENTS RELATED TO SECTION 402.—

(A) The second sentence of section 6226(g) (relating to determination of court reviewable) is amended by striking out "Only" and inserting in lieu thereof "With respect to the partnership, only".

(B) The second sentence of section 6228(a)(6) (relating to determination of court reviewable) is amended by striking out "Only" and inserting in lieu thereof "With respect to the partnership, only".

(2) AMENDMENTS RELATED TO SECTION 405.—

(A) Subsection (b) of section 405 of the Tax Equity and Fiscal Responsibility Act of 1982 is amended to read as follows:

"(b) PENALTY.—Subsection (a) of section 6679 (relating to failure to file returns as to organization or reorganization of foreign corporations and acquisition of their stock), as amended by section 340(b)(1), is amended by striking out 'section 6035 or 6046' and inserting in lieu thereof 'section 6035, 6046, or 6046A'."

(B) Paragraphs (2) and (3) of section 405(c) of such Act are amended to read as follows:

"(2) The section heading of section 6679, as amended by section 340(b)(2), is amended to read as follows:

" 'SEC. 6679. FAILURE TO FILE RETURNED, ETC., WITH RESPECT TO FOREIGN CORPORATIONS OR FOREIGN PARTNERSHIPS.' "

"(3) The table of sections for subchapter B of chapter 68 is amended by striking out the item relating to section 6679 and inserting in lieu thereof the following:

" 'Sec. 6679. Failure to file returns, etc., with respect to foreign corporations or foreign parnerships.' "

And the House agree to the same.

DAN ROSTENKOWSKI,
SAM GIBBONS,
J. J. PICKLE,
CHARLES B. RANGEL,
FORTNEY H. (PETE) STARK,
BARBER B. CONABLE,
JOHN J. DUNCAN,
BILL ARCHER,
Managers on the Part of the House.

ROBERT DOLE,
BOB PACKWOOD,
WILLIAM V. ROTH, Jr.,
RUSSELL B. LONG,
HARRY F. BYRD, Jr.,
Managers on the Part of the Senate.

EXPLANATION OF DIFFERING PROVISIONS

1. Transitional Rule for Rehabilitation Tax Credits

Present law.—Prior to ERTA, there was a 10-percent credit for rehabilitation of both historic and nonhistoric buildings. However, a certified historic structure could qualify only if the rehabilitation was certified by the Interior Department as being consistent with the historic character of the property or the district in which the property is located. To avoid having to obtain approval of the rehabilitation, taxpayers with buildings in registered historic districts could choose not to seek a designation of the building as a certified historic structure.

ERTA made a number of changes to the rehabilitation tax credit provisions. The 10-percent credit was replaced with a three-tier credit: (1) a 15-percent credit for 30-year old buildings, (2) a 20-percent credit for 40-year old buildings, and (3) a 25-percent credit for certified historic structures.

As under prior law, no credit is allowed for an uncertified rehabilitation of a certified historic structure. Contrary to prior law, no credit is allowed for an uncertified rehabilitation of a building in a registered historic district that is not a certified historic structure, unless the taxpayer obtains a certificate from the Interior Department that the property is not of historic significance to the district (decertification). The purpose of the rule is to ensure that a taxpayer with a building of historic significance cannot avoid having to obtain approval of the rehabilitation by choosing not to obtain a designation of the building as a certified historic structure. If the building is decertified, either the 15- or 20-percent, but not the 25-percent credit applies.

Under a transitional rule, a rehabilitation begun before 1982 that does not qualify under ERTA for the new credits is entitled to the 10-percent credit if the rehabilitation qualifies under the pre-ERTA rules. For example, if before 1982 a taxpayer commences rehabilitation of a building in a registered historic district that is not a certified historic structure and that has not received a decertification, no credit is allowed under ERTA. However, under the transitional rule, the 10-percent credit would apply if the pre-ERTA requirements were met.

If a rehabilitation began before 1982 and did not meet either the ERTA requirements or the pre-ERTA requirements, no credit would be allowed. For example, if the taxpayer had done an uncertified rehabilitation of a certified historic structure, neither the ERTA credits nor the 10-percent credit would apply. Both the ERTA rules and the pre-ERTA rules deny credit for uncertified rehabilitations of certified historic structures.

House bill.—No provision.

Senate amendment.—Under the Senate amendment, certain uncertified rehabilitations of a certified historic structure begun before 1982 would qualify for the 10-percent credit under the pre-ERTA rules if the pre-ERTA requirements, other than the requirement that the rehabilitation of a certified historic structure must be certified, are met. Designation of the structure as a certified structure must have occurred as a result of a request filed by the taxpayer with the Interior Department after December 31, 1981, and before September 27, 1982, for a determination of whether the building is of historic significance to the district.

Conference agreement.—The conference agreement follows the House bill.

2. Definition of Independent Producer

Present Law.—An independent producer for depletion and windfall profit tax purposes is any person who is not a "refiner" or "retailer." In general, a "retailer" is any person who directly or through a related person retails in excess of $5 million of oil or natural gas (excluding bulk sales of oil or natural gas to commercial or industrial users), or oil or gas products, in any taxable year.

House bill.—No provision.

Senate amendment.—The Senate amendment provides that, in determining the value of oil or gas products sold in any year for purposes of determining whether a taxpayer is a "retailer" (for depletion and windfall profit tax purposes), bulk sales of aviation fuels to the Department fo Defense are excluded. The provision will apply to bulk sales after September 18, 1982.

Conference agreement.—The conference agreement follows the Senate amendment.

Revenue effect.—The provision will reduce budget receipts by less than $5 million annually.

3. Qualified Royalty Production of Trusts

Present law.—Under present law, qualified royalty owners are exempt from the windfall profit tax on up to two barrels a day (three barrels a day after 1984) of production of qualified royalty oil. Only individuals, estates, and qualified family farm corporations are included in the definition of qualified royalty owners. Under this rule, neither a trust nor its beneficiaries are entitled to any royalty owner exemption with respect to the production of the trust.

House bill.—No provision.

Senate amendment.—Under the Senate amendment, each qualified beneficiary of a trust that has qualified royalty production ("allocable trust production") will be entitled to a refund of windfall porfit tax paid on his or her allocable share of that production. There is a limit of two barrels a day (three barrels after 1984) on the total amount of qualified royalty production with respect to which any beneficiary may claim either a royalty oil exemption (under sec. 4991(b)(5)) or a refund under the new provision.

A beneficiary's allocable share of the tax paid with respect to allocable trust production is the portion of that production which bears the same ratio to all such production as the beneficiary's al-

locable depletion deduction bears to the entire depletion deduction allocable to the trust and its beneficiaries. All depletion deductions are taken into account for this purpose including depletion on hard mineral, gas, and crude oil that is not royalty production.

Conference agreement.—In general, the Conference agreement follows the Senate amendment, except with respect to the method of allocating qualified trust royalty production (and any associated refund or credit) between and among the trust and its beneficiaries and for certain technical and clarifying amendments. As under the Senate amendment, each income beneficiary of a trust will be entitled to a credit for or refund of windfall profit tax paid by the trust on his or her allocable share of the qualified royalty production of the trust. No credit or refund is available with respect to production allocated to the trust.

Under the Senate amendment, this allocation was made on the basis of all the depletion deductions available with respect to oil, gas, and mineral production of the trust. Thus, under trusts requiring allocation of the depletion deduction to the trust, beneficiaries would have been unable to take advantage of the exemption even though they received a substantial portion of the income from the trust's qualified royalty production. Under the Conference agreement, allocable trust production is allocated between and among the trust and its beneficiaries according to each person's interest in total trust qualified royalty production.

Trust qualified royalty production is first allocated to the trust in an amount based on the amount of any trust reserve for depletion for the calendar year with respect to qualified royalty production. To the extent qualified royalty production remains unallocated, such production is allocated between and among the trust and its income beneficiaries according to each person's share, as a percent, of adjusted distributable net income (adjusted DNI) for the calendar year. Adjusted DNI is the distributable net income of the trust for the calendar year (regardless of the trust's taxable year) reduced by the amount of any excess in the trust depletion reserve with respect to trust qualified royalty production for the calendar year over the depletion deduction allocated to the trust under the Internal Revenue Code with respect to trust royalty production for the calendar year. Each person's allocable share of trust production is deemed to be a pro rata share of each unit (i.e., type and category, including each base price and removal price category) of oil.

The total benefit available to any qualified beneficiary of a trust through this new provision and the royalty owner's exemption provisions of the windfall profit tax may not exceed an overall limitation based on 2-barrels a day in 1981 through 1984 and 3-barrels a day in 1985 and thereafter. The amount available with respect to aggregate allocable trust production is determined by reducing the applicable limitation by the amount of any oil that is subject to the exemption for oil held directly by individuals. A beneficiary may elect, under regulations, to reduce his or her exemption amount on production owned outside of trusts so that a greater benefit is available with respect to trust production.

The conference agreement applies the same anti-transfer rules to this new provision as apply with respect to the royalty owner exemption for oil production owned directly by individuals. Under

these rules, transfers generally result in a loss of eligibility for the refund or credit unless they are made at death or between persons who share a single limitation on the credit or refund.

The conferees also understand that with respect to the amendments made by the bill concerning the definition of crude oil and the treatment of condensates, the appropriate source for legislative history is the report of the Committee on Finance, which last reported the provision.

The conference agreement also contains a technical amendment permitting the Secretary to reduce the estimated tax payment liability of an individual by the amount of the refund or credit provided under the amendment for purposes of the estimated tax penalty.

This provision applies with respect to calendar years beginning after December 31, 1981, except that the amendment with respect to estimated taxes is effective on January 1, 1982.

Revenue effect.—The provision will reduce budget receipts by $42 million in fiscal year 1983, $51 million in 1984, $49 million in 1985, $49 million in 1986, and $48 million in 1987.

4. Effect of Sale in Bankruptcy of Aircraft Subject to Safe-Harbor Lease

Present law.—In general, the regular investment credit applies to tangible personal property and other tangible property (generally not including a building or structural component) used in connection with manufacturing, production, or certain other activities. Property used predominantly outside the United States generally is not eligible.

Recapture of investment credit is required if the property either is disposed of or ceases to be used for a qualifying purpose prior to the end of the recovery period used for computing ACRS deductions. For example, recapture is required if 5-year recovery property is used predominantly outside the United States before the end of the 5-year recovery period.

The general rule requiring recapture upon sale of property does not apply when property subject to a safe-harbor lease is sold as a result of the bankruptcy of the lessee, if certain requirements are met (bankruptcy rule). Among the requirements that must be met is a requirement that the person who purchases the property use the property predominantly within the United States.

The safe-harbor lease rules were modified by the Tax Equity and Fiscal Responsibility Act of 1982. Those modifications do not affect either the general recapture rule or the special bankruptcy rule. The modifications do not apply to transitional safe-harbor lease property, including certain aircraft.

House bill.—No provision.

Senate amendment.—For aircraft covered by the safe-harbor lease transitional rules, the Senate amendment provides that no recapture will be required upon sale of the aircraft in bankruptcy to a person who uses the property predominantly outside the United States if the other requirements of the bankruptcy rule (other than the prohibition against foreign use) are met.

Conference agreement.—The conference agreement follows the House bill.

5. EFFECTIVE DATE FOR REGISTRATION OF TAX-EXEMPT OBLIGATIONS

Present law.—The Tax Equity and Fiscal Responsibility Act of 1982 provides that certain obligations of the United States can be issued only in registered (or book-entry) form. A similar requirement is imposed through the imposition of tax-related sanctions on State, local, foreign and private obligations of a type offered to the U.S. public which are issued after December 31, 1982.

House bill.—The original House bill contained no provision.

Senate amendment.—No provision.

House amendment.—The amendment delays for one year, to December 31, 1983, the effective date of the registration provisions of TEFRA as they apply to obligations the interest on which is exempt from Federal income tax.

Conference agreement.—The conference agreement follows the House amendment but provides for a 6-month rather than a one-year delay of the effective date. The conference agreement clarifies that the postponement of the registration requirement of TEFRA does not affect any requirements of law prior to TEFRA requiring certain bonds (e.g., housing bonds and energy bonds) to be in registered form in order to be tax exempt.

6. TRANSITIONAL SAFE-HARBOR LEASE RULE FOR AUTO MANUFACTURING PROPERTY

Present law.—The safe harbor lease modifications made by the Tax Equity and Fiscal Responsibility Act of 1982 do not apply to transitional safe harbor lease property. In general, eligible property must be placed in service by January 1, 1983. However, manufacturers that produce a class of products in an industry dominated by 4 or fewer persons have until October 1, 1983, to place their property in service. This provision was intended to apply only to automobile manufacturing.

House bill.—The original House bill contained no provision.

Senate amendment.—No provision.

House amendment.—The transitional safe harbor lease rule designed for automobile manufacturers was considered unclear in that it might be read to apply in some instances to property other than automobile manufacturing property. The amendment replaces the existing definition of eligible property with a definition that clarifies the intended scope and meaning of the provision.

The amendment makes it clear that only manufacturers of finished automobiles and trucks qualify and that the property must be used directly in the taxpayers' trade or business of manufacturing automobiles or trucks. At least half of the motor vehicles produced by the taxpayer in 1981 must have been passenger cars and light-duty trucks.

The amendment clarifies the type of property eligible under the provision by referring to equipment, machinery, and tools of the type included in the former ADR classification for motor vehicles. In addition to property described under that classification, eligible property includes property owned by an automobile manufacturer

and used by a vendor solely for the production of component parts to be sold to such manufacturer for inclusion in the finished automobiles or trucks.

Conference agreement.—The conference agreement follows the House amendment with the following modifications. The Conference agreement eliminates the requirement that at least half of the motor vehicles produced by the taxpayer in 1981 must have been passenger cars and light-duty trucks. The conference agreement limits eligibility to property used principally by the taxpayer directly in connection with the trade or business of manufacturing automobiles or light-duty trucks. Property used principally to manufacture heavy-duty trucks or truck-tractors is ineligible. For this purpose, a light-duty truck is a truck with a gross vehicle weight of 13,000 pounds or less. This definition of gross vehicle weight follows the provisons in section 4061 of the Internal Revenue Code and the regulations thereunder.

7. Discount Obligations Issued in a Reorganization

Present law.—When obligations are issued at a discount, with two principal exceptions the discount must be included in income by the holder and is deductible by the issuer over the life of the bond. If corporate obligations are issued for securities, original issue discount arises only if either the obligations or the securities are traded on an established securities market, and the original issue discount is the excess of the redemption price of the obligations over the value of the securities. Second, original issue discount does not arise with respect to bonds issued in recapitalizations and other corporate reorganizations, whether or not publicly traded. The Tax Equity and Fiscal Responsibility Act of 1982 amended the rules applicable to original issue discount to require the income inclusion and deduction in a manner that reflects the compounding of interest. Prior to TEFRA, discount was allocated on a pro rata basis to each month in the life of the bond, resulting in an overstatement of the portion allocable to the early months and a corresponding deduction understatement in later months.

New obligations exchanged for a corporation's outstanding obligations in a recapitalization may provide for the deferral until maturity of payments exceeding both the issue price of the outstanding obligations and their fair market value at the time of the exchange. Such deferred payments are not within the definition of original issue discount and are not taxable to a holder under the original issue discount rules of section 1232A. Some issuers have claimed entitlement to deductions prior to payment and without regard to the limitations that would apply if such deferred amounts were original issue discount. The claimed treatment would produce a substantial mismatching between the timing of the issuer's deduction and the holder's income inclusion, producing a substantial revenue loss to the Treasury. Present law is unclear as to the proper treatment of such amounts.

House bill.—The original House bill contained no provision.

Senate amendment.—No provision.

House amendment.—The amendment removes the exclusion for obligations issued in a reorganization from the definition of origi-

nal issue discount. Under the amendment, original issue discount will be limited to the excess of the redemption price of the obligations, when they are exchanged for outstanding obligations, over the issue price of such outstanding obligations increased for previously deducted discount. This limitation will apply where the issue price of the outstanding obligations so adjusted exceeds their fair market value. The amendment makes no change to the exception to the definition of original issue discount for obligations that are not publicly traded and are not issued in exchange for publicly traded stock or securities. The amendment applies to obligations issued after December 13, 1982, other than obligations issued pursuant to a written commitment binding on that date.

Conference agreements.—The conference agreement follows the House amendment with a modification under which the adjusted issue price of an old bond exchanged in the transaction, for purposes of determining the limitation on original issue discount to the holder, is the issue price of such bond increased by the portion of original issue discount previously includible in the income of any holder. The conferees do not intend to create any inference as to the timing of deductions for deferred interest payments allowable to an issuer of an obligation that is not considered as issued at a discount under section 1232(b)(2). The conferees understand that the Treasury Department is currently studying the question of whether deductions for deferred interest payments under obligations that are not considered as issued at a discount to the inclusion of the deferred interest in gross income by the holders of such obligations. In the event that the mismatching of income and deductions in transactions not covered by the conference agreement cannot be satisfactorily resolved under present law, further corrective legislation may be appropriate in the near future to prevent such mismatching.

8. Subchapter S

Present law.—The Subchapter S Revision Act of 1982 provides that a corporation making a subchapter S election must have either a taxable year ending on December 31 or other accounting period for which it establishes a business purpose. That Act generally applies to taxable years beginning after December 31, 1982. Under the analagous rule relating to partnerships, the Internal Revenue Service generally permits adoption of, or change to, a fiscal year that does not result in a deferral of income to the partners in excess of 3 months. Rev. Proc. 72-51, 1972-2 CB 832.

The Act also revised the distribution rules to allow tax-free distributions of subchapter S income.

House bill.—The original House bill contained no provision.

Senate amendment.—No provision.

House amendment.—The House amendment provides that the taxable year requirements of the Subchapter S Act will apply to any Subchapter S election made after October 19, 1982. Thus, the corporation's year must end on December 31, or at the end of any period for which it establishes a business purpose.

The House amendment provides that stock or securities transferred to a small business corporation after October 19, 1982, and

before the enactment of this bill, will not trigger shareholder gain where the corporation is liquidated under section 333 before March 1, 1983.

The House amendment also allows subchapter S corporations to elect to treat distributions as dividends. This will allow a corporation to distribute its earnings and profits to avoid the passive income restrictions, or to obtain a dividends paid deduction for the accumulated earnings tax or personal holding company tax for the year prior to becoming a subchapter S corporation. It will thus not be necessary to distribute the entire amount in the accumulated adjustment account at the end of the taxable year in order to pay a dividend. The procedures for electing dividend treatment will generally be similar to the procedures of prior law (Treas. Reg. sec. 1.1375–4(c)) allowing distributions out of earnings and profits to be made prior to distributions of previously taxed income.

Conference agreement.—The conference agreement generally follows the House bill. The conferees intend that the Internal Revenue Service, in determining whether a Subchapter S corporation may have a taxable year other than a calendar year, generally will apply rules similar to the rules applicable to partnerships. Thus, based on current administrative practice, the conferees generally understand that the Service will deem the business purpose test of section 1378 to be satisfied when the corporation's fiscal year would result in deferral of income to all shareholders of three months or less. However, if a corporation which was in existence on January 1, 1982, and which has a fiscal year ending on or after September 30, 1982 and on or before December 31, 1982, is eligible to make an S election after September 30, 1982, and does so within 75 days of the close of its fiscal year that ends in 1982, then the conferees intend that retention of the same fiscal year by the S corporation will satisfy the business purpose requirement. The agreement also provides that the special liquidation relief applies with respect to stock or securities transferred to the Subchapter S corporation after September 30, 1982.

9. Treatment of Certain Corporate Stock Purchases

a. Seller's consolidated return treatment

Present law.—The Tax Equity and Fiscal Responsibility Act of 1982 provided that certain stock purchases by a corporation could be treated as if the target corporation sold all its assets on the purchase date. If prior to the stock purchase the target corporation was a member of an affiliated group of corporations filing a consolidated return, it is unclear whether recapture and other tax liability of the target corporation from the deemed sale of its assets was a consolidated return liability of the selling group or a separate liability of the target corporation.

House bill.—No provision.

Senate amendment.—No provision.

House amendment.—The amendment provides that such liability will normally be a separate return liability of the target corporation. However, authority is provided pursuant to which it is contemplated that regulations will provide otherwise when consolidated return treatment achieves the appropriate result. With re-

spect to purchase contracts entered into after TEFRA was enacted and prior to enactment of this bill, if the purchasing corporation establishes to the satisfaction of the Secretary of the Treasury that the contract was entered into on the assumption that recapture taxes would be a liability on the seller's consolidated return, the transaction will be so treated under the bill.

Because of uncertainty as to the application of the TEFRA rule, the amendment extends the period during which asset sale treatment may be elected for prior stock purchases through February 28, 1983 and permits any election already made to be revoked by that date.

Conference agreement.—The conference agreement generally follows the House amendment. However, it provides more explicit rules for the inclusion under regulations of recapture and other tax liability of the target corporation in a selling corporation's consolidated return. Under the conference agreement, regulations will provide an election if the target corporation was a member of an affiliated group which files a consolidated return for the taxable year within which the transaction takes place. Under the election, the transaction will be treated as a sale by the target corporation of all its assets in a single transaction in which gain or loss is recognized to the same extent as in an actual sale and the target corporation will be a member of the selling consolidated return group with respect to the sale. Gain or loss to any member of such selling group from the sale or exchange of the target corporation's stock is not recognized to the extent the regulations so provide. Except as expressly provided by the regulations, this election may not be made for a transaction entered into before such regulations are promulgated.

The conference agreement also requires the purchaser to establish by clear and convincing evidence, rather than to the satisfaction of the Secretary of the Treasury, that the purchase contract was entered into with the assumption that recapture taxes would be a liability on the seller's consolidated return in order for the transaction to be so treated, as to contracts entered into prior to enactment of the bill.

b. Retroactive application

Present law.—As enacted by TEFRA, a transitional rule provided that the deemed asset sale treatment could be elected not later than November 15, 1982, with respect to stock purchases after August 31, 1980, and before September 1, 1982.

House bill.—The original House bill contained no provision.

Senate amendment.—The Senate amendment provides that the date the taxpayer makes the election, rather than the date of the stock purchase, will be the date of the deemed sale of assets for transactions qualifying under this transitional rule. Adjustments must be made for distributions and other items attributable to operations of the target corporation between the stock purchase date and the date of election. Certain rules requiring consistency of treatment when several acquisitions are made from the same affiliated group of corporations would not apply. Under the Senate amendment, an election made before September 28, 1982, under

this transition rule could be revoked not later than November 15, 1982.

House amendment.—The House provision modifies the Senate amendment to provide that the deemed asset sale with respect to these stock purchases will be effective for a date selected by the taxpayer which is after the later of June 30, 1982, or the stock purchase date and on or before the date of the election. The rule that would allow an election or revocation of an election to be made by February 28, 1983, would apply to these transitional rule elections under the House amendment. Any election made on or before November 15, 1982, may be revoked for the purpose of making a new election that selects another date for the deemed asset sale as provided above.

The House amendment also clarifies that certain tax-free transfers of the target corporation's stock or assets within the purchasing corporation's affiliated group will not result in disqualification of a transitional rule election.

Conference agreement.—The conference agreement generally follows the Senate amendment as modified by the House amendment.

10. Regulated Futures Contracts

a. Bank forward contracts

Present law.—Contracts providing for the future delivery of foreign currency may be entered into with certain commercial banks comprising an informal interbank market or as regulated futures contracts which are taxed under the mark-to-market rules. Contracts traded in the interbank market are not assignable without the consent of the bank, and therefore, as in the case of regulated futures contracts, are not includable in inventory.

House bill.—The House bill would place foreign currency contracts traded through the interbank market under the mark-to-market rules applicable to regulated futures contracts. This treatment would apply only to contracts involving those currencies which are also the subject of trading on regulated futures exchanges. The Secretary of the Treasury would be authorized to prescribe rules to determine the value of contracts and to disregard the terms of a contract which preclude the determination of readily ascertainable value. The bill would apply to contracts entered into after May 11, 1982.

Senate amendment.—The Senate amendment is the same as the House bill with modifications to permit certain taxpayer elections. Taxpayers may elect to have the amendment apply to positions held on and after May 11, 1982. In addition, the amendment provides that taxpayers may elect to extend the amendment to positions held in 1981. Taxpayers so electing would have 90 days after the date of enactment of this bill to have certain ERTA elections apply to 1981 positions.

House amendment.—The amendment revises and clarifies the rules applicable in determining whether a position will be treated as a foreign currency contract subject to mark-to-market treatment. The amendment provides that these contracts must be entered into at arm's length at a price determined by reference to the price in the interbank market and authorizes the issuance of regu-

lations necessary or appropriate to carry out the purpose of the amendment, including regulations which would exclude from mark-to-market treatment contracts, or types of contracts, which are inconsistent with the purpose of the amendment.

Thus, for example, terms which attempt to make the contracts transferable in such a way to allow them to be held as inventory (which would make them unlike futures contracts) could cause them to be ineligible for mark-to-market treatment.

Contracts traded in the interbank market generally include not only contracts between a commercial bank and another person but also contracts entered into with a futures commission merchant who is a participant in the interbank market. A contract between two persons neither of whom is a futures commission merchant or other similar participant in the interbank market is not a foreign currency contract under the provision. If there is a change in the parties to a foreign currency contract under the relevant non-tax law, the transaction resulting in such change will be treated as a termination of the contract with respect to the original parties and the entering into of a new contract which, in order to be treated as a foreign currency contract subject to mark-to-market treatment, must independently qualify as such under the rules.

It is contemplated that, under the regulatory authority provided in the bill, the Internal Revenue Service may publish periodic rulings or similar statements (i) that provide guidance as to whether a price is determined by reference to the interbank market and (ii) that specify a type of contract or identify specific contracts that are excluded from the definition of foreign currency contract. In general, a price is determined by reference to the price in the interbank market if it is a price that would be obtainable from a bank that is a substantial participant in the interbank market. In making this determination, proper adjustments may be made for differences attributable to variations in the contracts customary in the interbank market, such as provisions relating to reasonable and customary commissions, the amount of currency under the contract, and the credit worthiness of the parties.

Significant price fluctuations may occur rapidly, frequently within a period of several hours, in the commodities markets and similar markets, including the interbank market. Present law provides generally that a dealer in securities must identify a security as held for investment by the close of the day on which it is acquired and a similar identification requirement applies to positions constituting hedges excluded from mark-to-market rules and other limitations on commodities straddles. Identification does not establish a taxpayer's purpose in holding a position but merely provides a statutory condition in addition to satisfying, as a matter of fact, that such position is held for investment, as inventory, or as a hedge. A taxpayer's purpose with respect to a position generally is formed quickly, frequently before the position is acquired. Thus, characterization of a position on a taxpayer's books several hours after the position was acquired may have little or no probative value in supporting the taxpayer's claim that such characterization is the correct one.

The amendment modifies the 1982 election to permit a taxpayer to apply the amendment to positions held at any time during their 1982 taxable year.

Conference agreement.—The conference agreement generally follows the House bill and the House amendment with a clarifying modification. Under the modification, a taxpayer who held a foreign currency contract during 1981 and before June 24, 1981, who elects to have the amendment apply to foreign currency contracts held in 1981, may make a new election under either section 508(c) or section 509(a) of ERTA. For an electing taxpayer, any election under section 508(c) or 509(a) of ERTA must be applied to all regulated futures contracts, including foreign currency contracts.

Revenue effect.—This provision will reduce fiscal year budget receipts by $18 million in 1983.

b. Cash settlement contracts

Present law.—Regulated futures contracts taxed under the mark-to-market rules are defined to include only contracts that require the delivery of personal property. Since the enactment of ERTA, trading has commenced in a number of mark-to-market futures contracts calling only for cash settlement. Some contracts provide for cash settlement as an alternative to the delivery of personal property.

Settlement or other termination of a contract results in capital gain or loss notwithstanding the absence of a sale or exchange only if the contract is with respect to personal property that would be a capital asset in the hands of the taxpayer.

House bill.—The House bill deletes the provision that a contract must require the delivery of personal property to be treated as a regulated futures contract subject to mark-to-market treatment.

Senate amendment.—The Senate amendment retains the present law definition of a regulated futures contract but provides that cash settlement contracts requiring the delivery of an amount of cash determined by reference to the value of any property or index based on that value will meet the delivery of personal property requirement.

House amendment.—The House amendment retains the original House provision and adds an amendment providing that capital gain or loss will result from termination of a contract which does not require delivery of personal property even though there is no sale or exchange, if the contract itself is a capital asset in the hands of the taxpayer.

Conference agreement.—The conference agreement follows the House bill amendment.

11. At-Risk Rule for Safe-Harbor Lessors

Present law.—The Tax Equity and Fiscal Responsibility Act of 1982 provides that the at-risk limitations on losses and credits do not apply to closely held corporations that buy tax benefits as a lessor in a safe-harbor lease. In general, the safe-harbor lease changes are effective for property placed in service or leases entered into after July 1, 1982 (general effective date). Two special effective date rules apply for the at-risk change. The at-risk change

generally applies to property placed in service after September 3, 1982, the date of enactment of TEFRA (prospective rule). Subject to the general effective date rule, the change also applies to property placed in service before date of enactment where the lessor first becomes a closely held corporation after that date (retroactive rule).

House bill.—The original House bill contained no provision.

Senate amendment.—No provision.

House amendment.—House amendment adds language to clarify that the TEFRA at-risk change under the retroactive rule may apply where the property is placed in service before July 1, 1982, the general effective date for the safe-harbor leasing changes.

Conference agreement.—The conference agreement follows the House amendment.

12. Recapture of Expensing Deductions Where Property Used for Nonbusiness Purposes

Present law.—The Economic Recovery Tax Act of 1981 allowed taxpayers to elect to expense the cost of certain property acquired for use in a trade or business. For 1982, the maximum amount that may be expensed is $5,000.

Under present law, all or a portion of investment credit is recaptured (i.e., there is an increase in tax) when property is disposed of or otherwise ceases to be qualifying property before the end of the recovery period used to compute the credit. For example, if property ceases to be used for business purposes, recapture is required. Recapture of ACRS or expensing deductions is required (i.e., a portion of gain is treated as ordinary income rather than capital gain) at the time of a sale or exchange of the depreciable property. Unlike the investment credit, no recapture of ACRS or expensing deductions is required if the property ceases to be depreciable.

House bill.—No provision.

Senate amendment.—No provision.

House amendment.—The House amendment provides that, under regulations prescribed by the Secretary, the taxpayer must recapture the expensing deduction where the property is not predominantly used in a trade or business at any time before the close of the second taxable year following the year in which it is placed in service by the taxpayer. For this purpose, recapture means that, in the taxable year it is determined that the property is not used predominantly in a trade or business, the taxpayer must include in income the tax benefit derived from the expensing deduction.

The amendment does not alter the present law rule under which no expensing deduction is allowed if the property is not acquired for use in a trade or business.

Conference agreement.—The conference agreement follows the House amendment.

13. Credit for Tax Withheld From Interest, Dividends, or Patronage Dividends

Present law.—The Tax Equity and Fiscal Responsibility Act of 1982 provides for withholding on interest, dividends and patronage dividends. Under the Act, any amount of tax withheld on the payment or credit of interest, dividends or patronage dividends is

treated as a credit against the income tax of the recipient of the payment or credit for the recipient's taxable year beginning in the calendar year of the payment or credit.

House bill.—No provision.

Senate amendment.—No provision.

House amendment.—House amendment provides that the withholding credit is allowed in the same taxable year as the income is received. In the case of pass-through entities, such as partnerships, the ultimate taxpayers (i.e., partners) will thus receive the credit in the same taxable year the interest or dividends are included in their income.

Conference agreement.—The conference agreement follows the House amendment.

14. Foreign Oil Loss Recharacterization Transition Rule

Present law.—The Tax Equity and Fiscal Responsibility Act of 1982 changed the tax rules for U.S. taxpayers with foreign oil operations. Before the Act, the foreign tax credit was computed separately for oil income and non-oil income. These separate computations or "baskets" were eliminated by TEFRA. Both before and after the Act, taxpayers with an overall foreign loss in one year must recapture that loss in later years through an adjustment to the foreign tax credit. Eliminating the separate baskets for the foreign tax credit (including the recapture provision) for oil and non-oil income created an unintended problem for some taxpayers. Absent a special rule in TEFRA, a taxpayer with a pre-TEFRA non-oil overall foreign loss and post-TEFRA foreign oil income would have had to recapture that loss, possibly in the first post-TEFRA year. TEFRA alleviated this problem for pre-TEFRA foreign non-oil losses by spreading the recapture over an eight year period. However, a taxpayer with a pre-TEFRA overall foreign oil loss and post-TEFRA foreign non-oil income will have to recapture that loss, possibly in the first post-TEFRA year.

House bill.—No provision.

Senate amendment.—No provision.

House amendment.—The House amendment conforms the treatment of pre-TEFRA foreign oil losses to the treatment of pre-TEFRA foreign non-oil losses. Thus, it provides that a pre-TEFRA foreign loss from either of the two separate baskets (the foreign oil basket and the foreign non-oil basket) will be recaptured from post-TEFRA income from the other basket not more rapidly than ratably over the eight-year period beginning with the first taxable year beginning after December 31, 1982. Such recapture of losses against income from the other basket will be in addition to (and not in lieu of) recapture of losses against income from the same basket.

Conference agreement.—The conference agreement follows the House amendment.

15. Alternative Minimum Tax

Present law.—Prior to amendments made by the Tax Equity and Fiscal Responsibility Act of 1982, an alternative minimum tax was imposed on the tax preference for capital gains and adjusted item-

ized deductions. The minimum tax rules were extensively revised by that Act.

House bill.—No provision.

Senate amendment.—No provision.

House amendment.—Amendment provides that in computing the adjusted itemized deduction preference, any itemized deduction which is not allowed against the alternative minimum tax base in the current year because it is carried over to another year shall also be excluded from the computation of the adjusted itemized deduction preference in the current year. This amendment applies to taxable years beginning after 1978 and before 1983.

The House amendment also provides that in computing the alternative minimum tax for 1981, the special 20-percent capital gain maximum rate made applicable by ERTA to post-June 9 gains will be applied in certain cases by reducing the qualified net capital gain by losses for the taxable year. In these cases, the special tax base subject to the 20-percent rate will equal the taxpayer's alternate minimum taxable income.

Senate amendment.—No provision.

Conference agreement.—The conference agreement follows the House amendment.

16. Required Renegotiations of Outstanding Loans From Government Pension Plans

Present law.—Under income tax rules (sec. 72(p)) added by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), a loan made to an employee under an employer's tax qualified pension, profit-sharing, or stock bonus plan, or tax sheltered annuity program, generally is treated as a distribution from the plan unless certain requirements are met. All or a portion of the amount treated as distributed may be includible in gross income. Under the Act, a loan to an employee which is required to be repaid within 5 years generally is not treated as a taxable distribution when made if that loan, when added to the employee's outstanding loan balance under all plans of the employer, does not exceed the lesser of (1) one-half of the employee's vested plan benefits, or (2) $50,000 but in no event less than $10,000.

The income tax provisions relating to plan loans generally apply to loans made from tax-qualified plans of private employers or from government plans after August 13, 1982. Amounts borrowed by an employee on or before that date generally are not treated as taxable distributions. However, if a loan outstanding on August 13, 1982, is thereafter renegotiated, those amounts subject to the renegotiation are treated as if borrowed on the date of the renegotiation and may be treated as taxable distributions.

House bill.—No provision.

Senate amendment.—No provision.

House amendment.—Under the amendment if (1) a taxpayer borrows from a governmental plan after August 13, 1982, and before January 1, 1983, and (2) under the applicable State law the loan requires the renegotiation of all outstanding prior loans made to the taxpayer from the plan, then the required renegotiation will not be considered a renegotiation under the income tax rules for

plan loans. Thus, the amount of the prior outstanding loan balance of the employee under the plan will not be treated as a taxable distribution on account of the required renegotiation. The amendment will apply, however, only if the required renegotiation does not extend the duration of, or change the interest rate on, any outstanding prior loan from the plan.

The additional amount which is borrowed by the taxpayer after August 13, 1982, and before January 1, 1983, is taken into account under the income tax rules as a loan made on the date on which the amount is borrowed. The additional amount that is borrowed may, therefore, be treated as a distribution at the time it is borrowed.

Conference agreement.—The conference agreement generally follows the House amendment except that it provides that the special rule concerning renegotiations only applies to renegotiations made between August 13, 1982, and September 3, 1982 (the date of enactment of TEFRA). Additionally, the agreement provides that, in the case of a renegotiation which extends the duration of the loan, the special rule only applies if this extension is eliminated by April 1, 1983. For example, if a renegotiation on August 20, 1982, extended the duration of the loan, the special rule would be available if, as a result of a further renegotiation, the duration of the outstanding balance of the loan on August 13, 1982 was reduced to the period applicable on August 13, 1982. Of course, a further renegotiation which is limited to reducing the duration of the loan would not be treated as a new loan under the Code.

The agreement does not change the income tax treatment of a loan that would be treated as a distribution notwithstanding the special rule concerning renegotiations.

17. Clerical and Conforming Amendments

House bill.—The House bill contains a number of typographical, clerical and conforming amendments.

Senate amendment.—No provision.

House amendment.—The amendment contains additional typographical, clerical, and conforming amendments.

Conference agreement.—The conference agreement follows the House bill and the House amendment. One of the clerical amendments relates to a provision of the House bill and Senate amendment which for purposes of the targeted job credit provides that a period for determining an individual's eligibility as a member of an economically disadvantaged family generally is the 6 months immediately preceding the earlier of the month in which the eligibility determination occurs or the month in which the individual is hired. This provision applies with respect to certifications issued after the date of enactment for individuals beginning work after May 11, 1982. This change should in no way disturb certifications already issued for individuals who have been determined by the designated local agency as economically disadvantaged. However, certifications are subject to revocation if they are incorrect because of false information provided by the employee.

DAN ROSTENKOWSKI,
SAM GIBBONS,
J. J. PICKLE,
CHARLES B. RANGEL,
FORTNEY H. (PETE) STARK,
BARBER B. CONABLE,
JOHN J. DUNCAN,
BILL ARCHER,
Managers on the Part of the House.

ROBERT DOLE,
BOB PACKWOOD,
WILLIAM V. ROTH, Jr.,
RUSSELL B. LONG,
HARRY F. BYRD, Jr.,
Managers on the Part of the Senate.

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